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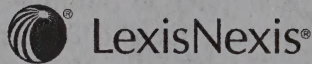
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## **TITLE 24**

# **RETIREMENT AND PENSIONS**

(CHAPTERS 9-12 IN VOLUME 25B)

### **CHAPTER.**

1. GENERAL PROVISIONS.
2. PUBLIC EMPLOYEE RETIREMENT PLANS GENERALLY.
4. ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM.
5. ARKANSAS STATE HIGHWAY EMPLOYEES' RETIREMENT.
6. STATE POLICE RETIREMENT.
7. RETIREMENT OF EMPLOYEES OF SCHOOLS AND EDUCATIONAL INSTITUTIONS.
8. RETIREMENT OF JUDGES AND COURT EMPLOYEES.

## **CHAPTER 1**

# **GENERAL PROVISIONS**

### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. PUBLIC EMPLOYEES' SOCIAL SECURITY.
3. FORFEITURE OF PUBLIC RETIREMENT SYSTEM BENEFITS.

## **SUBCHAPTER 1 — GENERAL PROVISIONS**

### **SECTION.**

24-1-106. Benefit enhancements.

### **24-1-101. Assets and income for retirement systems.**

#### **CASE NOTES**

#### **County Employees.**

Substantial evidence supported the finding of the Board of Trustees of the Arkansas Public Employees' Retirement System that former employees of nursing homes owned by counties were not "county employees" under the relevant

statutes and were not eligible for membership in the retirement system because their compensation was payable from patient revenues rather than from appropriated funds. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

### **24-1-106. Benefit enhancements.**

(a) No benefit enhancement provided for by §§ 24-2-302, 24-2-306, 24-2-401, 24-2-402, 24-2-501, § 24-3-102 [repealed], § 24-3-106 [repealed], § 24-3-201 [repealed], § 24-3-208 [repealed], § 24-3-209 [repealed], § 24-3-301 [repealed], § 24-3-303 [repealed], § 24-3-304 [repealed], §§ 24-4-101, 24-4-106, 24-4-107, 24-4-301, 24-4-507, 24-4-508, 24-4-510, 24-4-511, 24-4-518 — 24-4-520, 24-4-601, 24-4-608, 24-4-618, § 24-4-710 [repealed], §§ 24-4-745 — 24-4-747, 24-4-801, 24-4-803,



24-5-112, 24-5-119, 24-5-125, 24-5-133, 24-5-204, 24-6-219, 24-6-403 — 24-6-406, 24-6-410, 24-6-411, 24-7-202, 24-7-209, 24-7-301, 24-7-406, § 24-7-504 [repealed], §§ 24-7-603, 24-7-604, 24-7-606, 24-7-607, 24-7-702, 24-7-705, 24-7-706, and 24-7-708, § 24-7-713(b), §§ 24-7-720, 24-7-727, 24-7-728, § 24-7-729, § 24-7-1314 [repealed], § 24-7-1315, §§ 24-7-1401 — 24-7-1409 [repealed], §§ 24-8-223, 24-8-226 — 24-8-228, 24-8-701 — 24-8-714, § 24-8-715 [repealed], §§ 24-8-716, 24-8-717, 24-10-102, 24-10-303, 24-10-504 — 24-10-509, 24-10-602, 24-10-611, 24-10-613, 24-11-425, 24-11-434, 24-11-437, 24-11-438, 24-11-805, 24-11-818, and 24-11-833 shall be implemented if it would cause the publicly supported retirement system's unfunded actuarial accrued liabilities to exceed a thirty-year amortization.

(b) No benefit enhancement provided for by §§ 24-2-302, 24-2-306, 24-2-401, 24-2-402, 24-2-501, § 24-3-102 [repealed], § 24-3-106 [repealed], § 24-3-201 [repealed], § 24-3-208 [repealed], § 24-3-209 [repealed], § 24-3-301 [repealed], § 24-3-303 [repealed], § 24-3-304 [repealed], §§ 24-4-101, 24-4-106, 24-4-107, 24-4-301, 24-4-507, 24-4-508, 24-4-510, 24-4-511, 24-4-518 — 24-4-520, 24-4-601, 24-4-608, 24-4-618, § 24-4-710 [repealed], §§ 24-4-745 — 24-4-747, 24-4-801, 24-4-803, 24-5-112, 24-5-119, 24-5-125, 24-5-133, 24-5-204, 24-6-219, 24-6-403 — 24-6-406, 24-6-410, 24-6-411, 24-7-202, 24-7-209, 24-7-301, 24-7-406, § 24-7-504 [repealed], §§ 24-7-603, 24-7-604, 24-7-606, 24-7-607, 24-7-702, 24-7-705, 24-7-706, and 24-7-708, § 24-7-713(b), §§ 24-7-720, 24-7-727, 24-7-728, 24-7-729, § 24-7-1314 [repealed], § 24-7-1315, §§ 24-7-1401 — 24-7-1409 [repealed], §§ 24-8-223, 24-8-226 — 24-8-228, 24-8-701 — 24-8-714, § 24-8-715 [repealed], §§ 24-8-716, 24-8-717, 24-10-102, 24-10-303, 24-10-504 — 24-10-509, 24-10-602, 24-10-611, 24-10-613, 24-11-425, 24-11-434, 24-11-437, 24-11-438, 24-11-805, 24-11-818, and 24-11-833 shall be implemented by any publicly supported system which has unfunded actuarial accrued liabilities being amortized over a period exceeding thirty (30) years until the unfunded actuarial accrued liability is reduced to a level less than the standards prescribed by Title 24 of this Code.

**History.** Acts 1999, No. 11, § 3; 1999, § 8; 1999, No. 868, § 4; 1999, No. 869, No. 29, § 2; 1999, No. 30, § 2; 1999, No. § 2; 1999, No. 870, § 2; 1999, No. 883, 81, § 3; 1999, No. 104, § 3; 1999, No. 110, § 2; 1999, No. 884, § 2; 1999, No. 901, § 3; 1999, No. 903, § 2; 1999, No. 907, § 3; 1999, No. 955, § 2; 1999, No. 978, § 3; 1999, No. 1010, § 3; 1999, No. 1067, § 5; 1999, No. 1070, § 6; 1999, No. 1171, § 3; 1999, No. 1325, § 9; 1999, No. 1450, § 3; 1999, No. 1453, § 4; 1999, No. 1455, § 2; 1999, No. 1458, § 3; 1999, No. 1459, § 2; 1999, No. 1460, § 2; 1999, No. 1521, § 2; 1999, No. 1587, § 2; 1999, No. 1590, § 4; 2003, No. 347, § 2.

**Publisher's Notes.** This section is being set out to update a reference.



**SUBCHAPTER 2 — PUBLIC EMPLOYEES' SOCIAL SECURITY****SECTION.**

24-1-202. Definitions.

24-1-203. Rules.

24-1-205. Plans for employees of political subdivisions.

**SECTION.**

24-1-208. Contributions — Employees of political subdivisions.

**24-1-202. Definitions.**

As used in this subchapter:

(1) "Commissioner of Social Security" means any individual to whom the Commissioner of Social Security has delegated any of his or her functions under the Social Security Act, 42 U.S.C. § 301 et seq., with respect to coverage under that act of employees of the state and its political subdivisions;

(2) "Employee" means an officer or an employee of the state or a political subdivision of the state. All public employees of the State of Arkansas and its political subdivisions, for Social Security purposes, shall be deemed employees of the paying political entity for which services are rendered, which entity shall be the proper agency for making the deductions, matching contributions, and report required by this subchapter;

(3) "Employer" means the State of Arkansas and its political subdivisions;

(4) "Employment" means any service performed by an employee in the employ of the state or any political subdivision of the state for his or her employer except:

(A) Services which, in the absence of any agreement entered into under this subchapter, would constitute employment as defined in the Social Security Act, 42 U.S.C. § 301 et seq.; or

(B) Services which, under applicable federal law, may not be included or may have been voluntarily excluded in an agreement between the state and the Commissioner of Social Security entered into under this subchapter;

(5) "Modification" means an amendment to the original federal-state agreement to extend coverage to groups of additional employee classifications consistent with the provisions of section 218 of the Social Security Act, 42 U.S.C. § 301 et seq., and this subchapter;

(6) "Political subdivision" means an instrumentality of the state, of one (1) or more of its political subdivisions, or of the state and one (1) or more of its political subdivisions, but only if its instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not, by virtue of their relation to the juristic entity, employees of the state or subdivision;

(7) "Section 218 agreement" means the federal-state agreement between the Commissioner of Social Security and the State of Arkansas entered into December 20, 1951, as authorized by the Social Security Enabling Act for the purpose of extending coverage under Title II of the Social Security Act, 42 U.S.C. § 301 et seq.;



(8) "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", as amended, including regulations and requirements issued pursuant thereto; and

(9) [Repealed.]

(10) "Wages" means all remuneration for employment as defined in subdivision (4) of this section, including the cash value of all remuneration paid in any medium other than cash.

**History.** Acts 1951, No. 248, § 2; 1959, No. 237, § 1; 1965, No. 154, § 1; A.S.A. 1947, §§ 12-2402, 12-2418; Acts 1999, No. 22, § 1; 2005, No. 100, § 1; 2017, No. 265, § 1.

**Amendments.** The 2017 amendment repealed (9).

### 24-1-203. Rules.

The Arkansas Public Employees' Retirement System shall make and publish rules not inconsistent with the provisions of this subchapter it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this subchapter.

**History.** Acts 1951, No. 248, § 10; A.S.A. 1947, § 12-2410; Acts 2005, No. 100, § 1; 2019, No. 315, § 2841.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in the section heading and in the text.

### 24-1-205. Plans for employees of political subdivisions.

Each political subdivision of the state is authorized to submit for approval by the Arkansas Public Employees' Retirement System a plan for extending the benefits of Title II of the Social Security Act, 42 U.S.C. § 301 et seq., in conformity with the applicable provisions of that act, to employees of the political subdivisions. Each plan, and any amendment to it, shall be approved by the system if it finds that the plan, or plan as amended, is in conformity with such requirements as are provided in rules of the system, except that no plan shall be approved unless:

(1) It is in conformity with the requirements of the Social Security Act, 42 U.S.C. § 301 et seq., and with the Section 218 agreement entered into under § 24-1-204;

(2) It provides that all services which constitute employment as defined in § 24-1-202 and are performed by the employees of a political subdivision shall be covered by the plan;

(3) It specifies the sources from which the funds necessary to make the payments required by § 24-1-208(a)(1) and § 24-1-208(b) are expected to be derived and contains reasonable assurance that the sources will be adequate for that purpose;

(4) It provides for methods of administration of the plan by the political subdivision as are found by the system to be necessary for the proper and efficient administration of the plan; and

(5) It provides that the political subdivision shall make reports in such form and containing such information as the system may require



and shall comply with the provisions as the system or the Commissioner of Social Security may find necessary from time to time to assure the correctness and verification of reports.

**History.** Acts 1951, No. 248, § 5; A.S.A. 1947, § 12-2405; Acts 2005, No. 100, § 1; 2019, No. 315, § 2842.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in the introductory language.

## **24-1-208. Contributions — Employees of political subdivisions.**

(a)(1) Each political subdivision as to which a plan has been approved under § 24-1-205, with respect to wages as defined in § 24-1-202 and at such time or times as the Arkansas Public Employees' Retirement System may by rule prescribe, shall pay contributions in the amounts and at the rates specified in the applicable Section 218 agreement entered into by the system under § 24-1-204.

(2)(A)(i) Each political subdivision required to make payments under subdivision (a)(1) of this section, in consideration of the employee's retention in, or entry upon, employment, is authorized to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to the employee's wages as defined in § 24-1-202.

(ii) This amount shall not exceed the amount of tax which would be imposed by the Social Security Act, 42 U.S.C. § 301 et seq.

(B) The political subdivision is authorized to deduct the amount of the contribution from the employee's wages as and when paid.

(C) Failure to deduct the contribution shall not relieve the employee or employer of liability for the payments.

(b) Delinquent payments due under subdivision (a)(1) of this section may be recovered with interest at the rate of six percent (6%) per annum by an action in a court of competent jurisdiction against the political subdivision liable for the payments or at the request of the system, may be deducted from any other moneys payable to the subdivision by any department or agency of the state.

**History.** Acts 1951, No. 248, § 5; A.S.A. 1947, § 12-2405; Acts 2005, No. 100, § 1; 2019, No. 315, § 2843.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (a)(1).

## **SUBCHAPTER 3 — FORFEITURE OF PUBLIC RETIREMENT SYSTEM BENEFITS**

### **SECTION.**

24-1-301. Definitions.

24-1-302. Forfeiture of benefits.

24-1-303. Suspension of benefit payments.

### **SECTION.**

24-1-304. Notice to retirement system.

24-1-305. Notice to beneficiary.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause

provided: "It is found and determined by the General Assembly of the State of Ar-



kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

## 24-1-301. Definitions.

As used in this subchapter:

- (1) "Beneficiary" means an individual who receives or is designated by a member or retirant to receive a plan benefit under a retirement system; and
- (2) "Retirement system" means:
  - (A) The Arkansas Teacher Retirement System, established by the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;
  - (B) The Arkansas State Highway Employees' Retirement System, established by § 24-5-103;
  - (C) The Arkansas Public Employees' Retirement System, established by § 24-4-103;
  - (D) The State Police Retirement System, established by § 24-6-203;
  - (E) The Arkansas Judicial Retirement System, established by § 24-8-201 et seq.;
  - (F) An alternate retirement plan for:
    - (i) A college, university, or the Division of Higher Education provided for under § 24-7-801 et seq.; and
    - (ii) A vocational-technical school or the Division of Career and Technical Education, the Adult Education Section, and the Office of Skills Development, provided for under § 24-7-901 et seq.;
  - (G) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.; and
  - (H) A firemen's relief and pension fund or a policemen's pension and relief fund provided for under § 24-11-101 et seq.

**History.** Acts 2017, No. 756, § 1; 2019, No. 910, § 2358.

**Amendments.** The 2019 amendment substituted "Division of Higher Education" for "Department of Higher Education" in (2)(F)(i); and substituted "Division

of Career and Technical Education, Adult Education Section of the Division of Workforce Services, and the Office of Skills Development" for "Department of Career Education" in (2)(F)(ii).

## 24-1-302. Forfeiture of benefits.

- (a)(1) A beneficiary forfeits his or her right to benefit payments under a retirement system if he or she:



(A) Is convicted by a court of competent jurisdiction of the unlawful killing of the member or retirant;

(B) Pleads guilty or nolo contendere to the unlawful killing of the member or retirant;

(C) Is found liable by a court of competent jurisdiction for the unlawful killing of the member or retirant by a preponderance of the evidence in a civil action;

(D) Is acquitted by a court of competent jurisdiction for the unlawful killing of the member or retirant by reason of insanity, mental defect or disease, or any other mental incapacity; or

(E) Is found by a court of competent jurisdiction to lack the capacity to understand or effectively assist in defending a criminal proceeding against him or her for the unlawful killing of the member or retirant.

(2) If a retirement system finds that a beneficiary has forfeited his or her right to benefit payments from the retirement system under subdivision (a)(1) of this section, the retirement system shall treat the beneficiary as if he or she is deceased and shall not make benefit payments to the beneficiary.

(b)(1) If a beneficiary appeals his or her conviction for an offense described under subdivision (a)(1) of this section, benefit payments shall not be paid to the beneficiary unless the appeal results in a reversal of the conviction.

(2)(A) If the conviction of a beneficiary for an offense described under subdivision (a)(1) of this section is reversed, the retirement system may make benefit payments to the beneficiary.

(B) If the conviction of a beneficiary for an offense described under subdivision (a)(1) of this section is affirmed, the retirement system shall not make benefit payments to the beneficiary.

(c) If a member or retirant does not have a contingent beneficiary who may receive benefit payments under this section, the member or retirant's contributions to the retirement system shall be refunded to the estate of the member or retirant.

**History.** Acts 2017, No. 756, § 1.

### **24-1-303. Suspension of benefit payments.**

(a) A retirement system may suspend benefit payments to a beneficiary if the retirement system:

(1) Receives the written notice required under § 24-1-304 from a prosecuting attorney; or

(2) Has reasonable cause to believe that the beneficiary will be charged with the unlawful killing of the member or retirant.

(b) If benefit payments are suspended under this section, the suspension shall continue until:

(1) A final adjudication of the criminal or civil proceeding; or



(2)(A) The retirement system receives written confirmation from the prosecuting attorney that the beneficiary will not be charged with the unlawful killing of the member or retiree.

(B) The retirement system shall request written confirmation from the prosecuting attorney stating that the beneficiary will not be charged with the unlawful killing of the member or retiree.

**History.** Acts 2017, No. 756, § 1.

#### **24-1-304. Notice to retirement system.**

(a) A prosecuting attorney shall send written notice by certified mail, return receipt requested, to the executive director or executive secretary of the applicable retirement system when a beneficiary:

(1) Is charged with an offense described under § 24-1-302; or

(2)(A) Will not be charged with an offense described under § 24-1-302.

(B) If the prosecuting attorney receives a request under § 24-1-303 from a retirement system and a decision on whether the beneficiary will be or will not be charged with an offense described under § 24-1-302 has not been made, the prosecuting attorney shall notify the retirement system that a decision is pending.

(b) The clerk of the court in which the proceeding against the beneficiary is being conducted shall send written notice by certified mail, return receipt requested, to the executive director or executive secretary of the applicable retirement system when:

(1) A beneficiary is convicted of an offense described under § 24-1-302;

(2) A beneficiary appeals his or her conviction for an offense described under § 24-1-302; and

(3) The appellate court issues a final ruling upholding or reversing the conviction of the beneficiary for an offense described under § 24-1-302.

(c) A written notice required under this section shall include any information that the applicable retirement system determines necessary for the retirement system to identify the account of the member or retiree and implement this subchapter.

**History.** Acts 2017, No. 756, § 1.

#### **24-1-305. Notice to beneficiary.**

(a)(1) The executive director or executive secretary of the applicable retirement system or his or her designee shall notify a beneficiary when benefits shall not be paid as provided under § 24-1-302.

(2) The notice provided under subdivision (a)(1) of this section shall advise the beneficiary of:

(A) The specific facts supporting the retirement system's nonpayment of benefits; and



(B) His or her right to request a waiver of the forfeiture before the board of trustees of the retirement system.

(b)(1) A beneficiary shall request a waiver of the forfeiture by the board of trustees of the retirement system within thirty (30) days of receiving the notice required under subsection (a) of this section.

(2) A waiver request made under subdivision (b)(1) of this section shall be submitted to the board of trustees of the retirement system in the manner specified by the applicable retirement system.

(c) Upon receiving a waiver request submitted under subdivision (b)(1) of this section, the board of trustees of the retirement system shall set and notify the beneficiary of the waiver hearing date.

**History.** Acts 2017, No. 756, § 1.

## CHAPTER 2

### PUBLIC EMPLOYEE RETIREMENT PLANS GENERALLY

#### SUBCHAPTER.

3. CORRECTION OF ERRONEOUS MEMBERSHIPS.
4. RECIPROCAL SERVICE CREDITS.
5. MILITARY SERVICE CREDIT.
7. ARKANSAS PUBLIC EMPLOYEE RETIREMENT PLANS.

#### SUBCHAPTER 3 — CORRECTION OF ERRONEOUS MEMBERSHIPS

#### SECTION.

24-2-302. Classification of members.

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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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#### 24-2-302. Classification of members.

Except as otherwise specifically provided in this subchapter, all employees of the State of Arkansas or any of its political subdivisions who are members or become members of a state retirement system

shall be members of the retirement system indicated in this section as follows:

(1) All eligible employees of the Arkansas Department of Transportation shall be members of the Arkansas State Highway Employees' Retirement System;

(2) All eligible employees of the Division of Arkansas State Police shall be members of the State Police Retirement System;

(3) The following persons shall be members of the Arkansas Teacher Retirement System:

(A) Any person employed by a school for the purpose of giving instruction and whose employment requires state certification;

(B) Any other person employed by a school in a regular or special position;

(C) Any person employed by any of the following organizations or agencies:

(i) Arkansas School for the Blind;

(ii) Arkansas School for the Deaf;

(iii) Arkansas Activities Association;

(iv) A local school board;

(v) State Board of Education;

(vi) Regional education service cooperatives; and

(vii) Arkansas Teacher Retirement System;

(D) Any person employed in a position requiring professional training or certification with an area vocational-technical school or employed by the Arkansas Educational Television Commission, except that employees of area vocational-technical schools and the Division of Career and Technical Education, the Adult Education Section, and the Office of Skills Development, who have elected to participate in an alternate retirement plan established by §§ 24-7-901 and 24-7-903 — 24-7-908 shall be active members of the alternate retirement plan; and

(E)(i) Any person employed in a position requiring professional training or certification with Arkansas Rehabilitation Services, the Division of State Services for the Blind, or the Division of Youth Services except those employees who have elected coverage under § 24-4-101 et seq.

(ii) Membership of employees of Arkansas Rehabilitation Services and the Division of State Services for the Blind shall be subject to the following conditions:

(a) Those employees who were employed before January 1, 1985, and who were members of the Arkansas Teacher Retirement System on that date shall continue to be members of the Arkansas Teacher Retirement System, except that in the event the time limit for those employees to change to the noncontributory plan of the Arkansas Public Employees' Retirement System under § 24-4-522 is extended beyond January 1, 1985, those employees shall have the maximum time allowed by law to elect to make the change;

(b) Those employees who were employed before January 1, 1985, and who are members of the noncontributory plan of the Arkansas



Public Employees' Retirement System on that date shall continue to be members of the Arkansas Public Employees' Retirement System; and

(c) Persons whose initial employment by either Arkansas Rehabilitation Services or the Division of State Services for the Blind is on or after January 1, 1985, shall be members of the noncontributory plan of the Arkansas Public Employees' Retirement System; and

(4) All eligible employees of the State of Arkansas or any of its political subdivisions except those who are members of another legally established state retirement plan shall be members of the Arkansas Public Employees' Retirement System.

**History.** Acts 1973, No. 667, § 2; 1979, No. 576, § 2; 1985, No. 790, § 1; A.S.A. 1947, § 12-2572; Acts 1999, No. 325, § 1; 2001, No. 151, § 1; 2005, No. 146, § 1; 2005, No. 2190, § 22; 2007, No. 617, § 43; 2017, No. 707, § 267; 2019, No. 910, §§ 2359-2361.

**Amendments.** The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (1).

The 2019 amendment substituted "Division of Arkansas State Police" for "De-

partment of Arkansas State Police" in (2); substituted "Division of Career and Technical Education, Adult Education Section of the Division of Workforce Services, and the Office of Skills Development" for "Department of Career Education" in (3)(D); and substituted "Division of Workforce Services" for "Department of Career Education" following "Arkansas Rehabilitation Services of the" in (3)(E)(i).

SUBCHAPTER 4 — RECIPROCAL SERVICE CREDITS

SECTION.	SECTION.
24-2-401. Definitions.	using deferred service credit.
24-2-402. Retirement eligibility — Calculation of reciprocal service	24-2-405. Disability benefits.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through

6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 711, § 3: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions concerning the use of reciprocal service credit for the purpose of providing retirement benefits to public employees of the state are in need of revision and updating to maintain the retirement laws in conformance with sound public pension policy; that the law concerning reciprocal service credit uses archaic language that is in need of updating so that retirement benefits may be administered between each reciprocal retirement system; that the retirement systems of this state oper-



ate on a fiscal year of July 1 to June 30; that a July 1, 2021, effective date is necessary to allow the provisions of this act to take effect on the first day of the fiscal year and enable the proper administration of the procedures required under this act; that revising and updating the provisions concerning reciprocal service credit is of great importance to the actuarial process and the protection of retirement

benefits payable to members of the retirement systems of this state; and that this act is necessary to maintain an orderly system of retirement benefits for the members of the retirement systems of this state. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

## **24-2-401. Definitions.**

As used in this subchapter:

(1) "Deferred retirement option plan" means an option for retirement under a reciprocal system whereby the retirement system members, in lieu of terminating employment, can continue with employment with covered employers and can accept a service retirement benefit pursuant to deferred retirement option plan provisions in § 24-7-1301 et seq. for the Arkansas Teacher Retirement System or for any other deferred retirement option plan which might be created by, or authorized for creation by, law under a reciprocal system;

(2) "Public safety service covered by the Arkansas Public Employees' Retirement System" means service as a public safety member as defined in § 24-4-101(34);

(3) "Reciprocal system" means:

(A) The Arkansas Teacher Retirement System in operation June 30, 1957, and continued by §§ 24-7-202 — 24-7-205, 24-7-301 — 24-7-305, 24-7-401 — 24-7-411, 24-7-501, 24-7-502, 24-7-601 — 24-7-604, 24-7-606, 24-7-701, 24-7-702, 24-7-704 — 24-7-713, 24-7-715, and 24-7-716;

(B) The Arkansas State Highway Employees' Retirement System, established by § 24-5-103;

(C) The Arkansas Public Employees' Retirement System, established by § 24-4-103;

(D) The State Police Retirement System, established by § 24-6-203;

(E) The Arkansas Judicial Retirement System, established by § 24-8-201 et seq.;

(F) An alternate retirement plan for:

(i) A college, university, or the Division of Higher Education provided for under § 24-7-801 et seq.; or

(ii) A vocational-technical school or the Division of Career and Technical Education, the Adult Education Section of the Division of Workforce Services, the Division of Higher Education, and the Office of Skills Development, with respect to plans provided for under § 24-7-901 et seq.; or

(G) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.;



(4) “State employer” means:

(A) The public employer whose employees are covered under:

- (i) The Arkansas Teacher Retirement System;
- (ii) The Arkansas State Highway Employees’ Retirement System;
- (iii) The Arkansas Public Employees’ Retirement System; or
- (iv) The State Police Retirement System;

(B) The public employer whose employees are circuit court judges, judges of the Court of Appeals, and justices of the Supreme Court, whether elected or appointed to office, covered under the Arkansas Judicial Retirement System;

(C) The public employer whose employees are district court judges, whether elected or appointed to office, covered under the Arkansas Public Employees’ Retirement System; or

(D) A public employer who is:

(i) A college, university, or the Division of Higher Education whose employees are covered by an alternate retirement plan provided for under § 24-7-801 et seq.; or

(ii) A vocational-technical school or the Division of Career and Technical Education, the Adult Education Section, and the Office of Skills Development, whose employees are covered by an alternate retirement plan provided for under § 24-7-901 et seq.;

(5) “Member” means an employee of a state-retirement-plan-covered employer as defined under the plan of the retirement system;

(6)(A) “Retirement benefit” means a benefit that is offered to a retired member in accordance with the law applicable to the retirement system and includes without limitation a:

(i) Monthly retirement benefit; and

(ii) Deferred retirement plan benefit or annuity, if available.

(B) “Retirement benefit” does not exclusively mean a monthly retirement benefit that is offered to a retired member in accordance with the law applicable to the retirement system; and

(7) “Service credit” means retirement credit earned by a member for time worked that is used as a factor that is applied to a retirement benefit formula under the law applicable to the retirement system in order to determine the monthly retirement benefit of the member.

**History.** Acts 1965, No. 488, § 1; 1975, No. 611, § 1; 1981, No. 483, § 2; A.S.A. 1947, § 12-2537; Acts 1987, No. 357, § 2; 1995, No. 949, § 1; 1997, No. 485, § 1; 1997, No. 857, § 1; 1997, No. 927, § 1; 1999, No. 537, § 1; 2001, No. 151, § 3; 2005, No. 1022, § 1; 2007, No. 177, §§ 6, 7; 2011, No. 978, § 1; 2019, No. 910, §§ 2362, 2363; 2021, No. 545, § 24; 2021, No. 711, § 1.

**Amendments.** The 2019 amendment substituted “Division of Higher Education” for “Department of Higher Education” in (3)(F)(i) and (4)(D)(i); and substi-

tuted “Division of Career and Technical Education, Adult Education Section of the Division of Workforce Services, and the Office of Skills Development” for “Department of Career Education” in (3)(F)(ii) and (4)(D)(ii).

The 2021 amendment by No. 545 inserted “of the Division of Workforce Services, the Division of Higher Education” and “with respect to plans” in (3)(F)(ii).

The 2021 amendment by No. 711 added the definitions for “Member”, “Retirement benefit”, and “Service credit”.

**24-2-402. Retirement eligibility — Calculation of reciprocal service using deferred service credit.**

(a)(1) A member who maintains deferred service credit in one (1) or more reciprocal systems may combine the deferred service credit with service credit earned under a reciprocal system to meet the separate eligibility requirements for receiving a monthly retirement benefit under each reciprocal system.

(2) The combined service credit calculated under subdivision (a)(1) of this section shall:

(A) Be used for the purpose of establishing the eligibility of a member to receive a retirement benefit from a retirement system; and

(B) Not be used to calculate the monthly retirement benefit for service credit earned by a member under each retirement system.

(b)(1) To establish the eligibility of a member to receive a monthly retirement benefit from each retirement system, the credited service under all reciprocal systems shall be totaled, and the total credited service shall be used to determine the eligibility of a member to receive a retirement benefit from each retirement system according to the eligibility requirements of that retirement system.

(2)(A) The separate retirement system's eligibility requirements for receiving a monthly retirement benefit, the calculation of a monthly retirement benefit, or a deferred retirement option plan, if available, under one (1) retirement system shall not apply to the eligibility requirements for receiving a monthly retirement benefit or a deferred retirement option plan, if available, under a reciprocal system.

(B) Any interest credited to the deferred retirement account shall be paid to the member's account under the deferred retirement option benefit program in effect for that retirement system.

(c)(1) Once a member meets the eligibility requirements to receive a retirement benefit, the monthly retirement benefit received by the member from a reciprocal system shall be limited to the member's service credit under the reciprocal system and calculated separately under the retirement benefit formula of that reciprocal system.

(2) A retirement system shall not use a member's service credit from a reciprocal system to calculate or increase the monthly retirement benefit of the member.

(d)(1) Service credit earned by a member under a retirement system shall not be combined with service credit earned by the member under a reciprocal system if the member withdraws his or her employee contributions from either the retirement system or the reciprocal systems.

(2) Service credit may be combined under this section if:

(A) A member withdraws his or her employee contributions from a retirement system; and

(B) After the withdrawal of his or her employee contributions from the retirement system, the member reestablishes service credit by



depositing the amount required in accordance with the law applicable to the retirement system from which the employee contributions were withdrawn.

(e)(1) The final average compensation used to determine a monthly retirement benefit payable to a member by a reciprocal system shall be the final average compensation calculated for credited service under the reciprocal system as provided by the law applicable to the reciprocal system.

(2)(A) A retirement system is not required to calculate a monthly retirement benefit based on the final highest salary or final average compensation under the reciprocal system in which the member has service credit.

(B) If a retirement system uses the highest final average compensation of the reciprocal system to determine a monthly benefit payable to a member, the final average compensation shall be computed as prescribed by the law of the reciprocal system.

(3) Compensation and salary earned in the Arkansas Judicial Retirement System shall not be used to determine the final highest salary of a member who has service credit in both the Arkansas Judicial Retirement System and a reciprocal system under this section.

(4)(A) A member who has earned service credit in more than one (1) reciprocal system on or before June 30, 2021, shall have his or her monthly benefit calculated by using the highest final average compensation the member has earned from any reciprocal system, excepting compensation and salary earned under subdivision (e)(3) of this section.

(B) The final average compensation under subdivision (e)(4)(A) of this section shall be computed as prescribed by the law of each reciprocal system at the time of the member's retirement.

(f) Each reciprocal system that has a minimum benefit provision in the plan of the reciprocal system shall pay only a proportionate share of the minimum benefit amount based on the ratio of service credit in the reciprocal system to the total service in all reciprocal systems.

(g)(1) This section does not prohibit providing the same death-in-service benefits to a member that would have been payable had the member died while an active member of a reciprocal system.

(2) A member who dies in service while a member of one (1) reciprocal system shall be considered as currently employed by all reciprocal systems in which the member retains credited service.

(3) If a member has accrued credited service under the provisions of this subchapter but dies before retirement or before becoming eligible to retire, then the benefits payable shall be those provided by the reciprocal system in which the member has deferred service, with the reciprocal system being responsible for the payment of the death-in-service benefits provided by the applicable provisions of the reciprocal system's retirement laws.

(4) If death-in-service benefits are payable by more than one (1) reciprocal system to eligible survivors of a deceased member, the

survivors shall not receive more, as a percentage of the deceased member's final pay or as a minimum dollar amount, than the largest amount payable by any single reciprocal system.

(5) Each reciprocal system that has a minimum benefit provision in its plan shall pay only a proportionate share of that minimum amount based on the ratio of service in that reciprocal system to the total service in all reciprocal systems.

(6) If the reciprocal system is an alternate retirement plan under § 24-7-801 et seq. or § 24-7-901 et seq., death-in-service benefits shall be contingent on death-in-service benefits having been provided by the alternate retirement plan and having been selected by the member as a benefit.

(h)(1) Both service in the Arkansas Public Employees' Retirement System as a member of the General Assembly and service in another reciprocal system during the same period of time may be counted to meet the service requirements for benefits from the reciprocal system.

(2) The benefit payable by a reciprocal system shall be based on the credited service in the reciprocal system and the final average compensation under the reciprocal system.

(i)(1) If the reciprocal system is the Arkansas Judicial Retirement System and the member's benefits are determined under § 24-8-201 et seq., the benefit payable by the Arkansas Judicial Retirement System shall be determined by multiplying the benefit provided by § 24-8-218 by the following fraction:

(A) The numerator shall be the number of the actual years of service credited in the Arkansas Judicial Retirement System as a justice of the Supreme Court or judge of the circuit or chancery courts or the Court of Appeals; and

(B) The denominator shall be fourteen (14) years.

(2) In no instance shall the benefit payable by the Arkansas Judicial Retirement System exceed the benefit provided by § 24-8-218.

(j)(1) In accordance with the law applicable to a retirement system, the board of trustees of each retirement system shall establish the eligibility requirements for a member to receive a monthly retirement benefit or deferred retirement option plan, if available, for service credit earned under their respective retirement system.

(2) The board of trustees of each reciprocal system shall promulgate rules necessary to coordinate the retirement benefits of the reciprocal system with any other reciprocal system.

(k) If the reciprocal system is an alternate retirement plan for a college, a university, or the Division of Higher Education provided for under § 24-7-801 et seq., or for a vocational-technical school or the Department of Career Education provided for under § 24-7-901 et seq., the benefits payable shall be in accordance with terms specified in the written alternate retirement plan document for purchasing the insurance policies or annuity contracts, both fixed and variable in nature, for the participants.



**History.** Acts 1965, No. 488, § 2; 1967, No. 310, § 1; 1971, No. 579, §§ 1, 2; 1975, No. 611, § 2; 1977, No. 663, § 5; 1979, No. 127, § 1; 1979, No. 493, § 1; 1979, No. 821, § 4; 1983, No. 679, §§ 1, 2; A.S.A. 1947, § 12-2538; Acts 1987, No. 357, § 3; 1987, No. 737, § 1; 1991, No. 381, § 1; 1995, No. 949, § 2; 1997, No. 485, § 2; 1997, No. 857, § 2; 1997, No. 927, § 2; 1999, No. 537, §§ 2, 5; 2001, No. 151, § 4;

2005, No. 1022, §§ 2, 3; 2007, No. 177, §§ 8, 9; 2009, No. 742, § 1; 2019, No. 315, §§ 2844, 2845; 2021, No. 711, § 2.

**Amendments.** The 2019 amendment substituted “rules” for “regulations” in (2)(C); and deleted “and regulations” following “rules” in (8)(B).

The 2021 amendment rewrote the section heading and the section.

## 24-2-405. Disability benefits.

(a) A member of a reciprocal system with five (5) or more years of credited service in two (2) or more reciprocal systems shall be eligible to apply for disability benefits from each reciprocal system in which he or she has credited service.

(b) Each reciprocal system shall make the determination under its respective rules as to whether the member is eligible for disability benefits.

(c) The member shall be eligible for a refund of his or her accumulated contributions plus interest, if any, from any reciprocal system in which he or she does not qualify for disability benefits. This refund shall not alter his or her eligibility for benefits from any other reciprocal system.

**History.** Acts 1965, No. 488, § 3; 1971, No. 579, § 3; 1975, No. 611, § 3; A.S.A. 1947, § 12-2539; Acts 2001, No. 151, § 6; 2019, No. 315, § 2846.

**Amendments.** The 2019 amendment deleted “and regulations” following “rules” in (b).

## SUBCHAPTER 5 — MILITARY SERVICE CREDIT

### SECTION.

24-2-504. Return to covered employment by military personnel.

24-2-505. Compliance with Heroes Earnings Assistance and Relief Tax Act of 2008.

## 24-2-504. Return to covered employment by military personnel.

(a) An active member of the state retirement system who is called to active military duty or state active military duty shall be afforded all employment protections as provided in the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq., as in effect on January 1, 2009.

(b) Employer contributions shall be paid for the state retirement system member’s period of active military duty by the member’s last retirement system employer immediately before the member’s active duty in accordance with the Uniformed Services Employment and Reemployment Rights Act, as in effect on January 1, 2009.

(c) In order to receive retirement credit in the state retirement system for the time spent in active duty, a member covered by the contributory provisions of the member's state retirement system who returns from active military duty to either the same or a different covered employer shall pay into the state retirement system the employee contributions that would have otherwise been paid into the state retirement system by the member as though the member had never left covered service.

**History.** Acts 2009, No. 295, § 3; 2019, No. 474, § 1. inserted "or state active military duty" in (a).

**Amendments.** The 2019 amendment

### **24-2-505. Compliance with Heroes Earnings Assistance and Relief Tax Act of 2008.**

(a)(1) In the case of a member who dies while performing qualified military service, including state active military duty, on or after January 1, 2011, and who otherwise would have been entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq., as in effect on January 1, 2011, the survivors of that member are entitled to any additional benefits that would have been provided under the public employee retirement plan had the member resumed employment with a covered employer on the day preceding his or her death and then terminated employment on the actual date of death.

(2) Subdivision (a)(1) of this section does not apply to benefit accruals relating to the period of qualified military service.

(3) The member's qualified military service shall be counted for purposes of determining whether the individual in issue was vested with the public employee retirement plan.

(b) In the case of a member who becomes disabled while performing qualified military service, including state active military duty, on or after January 1, 2011, and who otherwise would have been entitled to reemployment rights under the federal Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq., as in effect on January 1, 2011, that member is considered to have resumed employment with a covered employer on the day preceding the onset of his or her disability and then terminated employment on the actual date he or she became disabled.

(c) A member who dies or becomes disabled while performing qualified military service, including state active military duty, is deemed to have made employee contributions for the purpose of determining benefits other than benefit accruals that are contingent on those contributions for the period of qualified military service.

(d) This section applies to each public retirement system unless the system has a specific provision regarding the Heroes Earnings Assistance and Relief Tax Act of 2008, Pub. L. No. 110-245, already in its law.



**History.** Acts 2011, No. 38, § 5; 2019, No. 474, §§ 2, 3.

**Amendments.** The 2019 amendment inserted “including state active military duty” in the introductory language of (a)(1), and in (b) and (c).

## SUBCHAPTER 7 — ARKANSAS PUBLIC EMPLOYEE RETIREMENT PLANS

SECTION.	SECTION.
24-2-701. Financial objectives and actuarial valuation.	24-2-702. Reports.
	24-2-703. Tax exemptions.

**Effective Dates.** Acts 2019, No. 427, § 23: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions of this act to begin on the first day of the fiscal year and to provide for the proper administration of the Arkansas Teacher Retirement System; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement

System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

### 24-2-701. Financial objectives and actuarial valuation.

- (a) The general financial objective of each Arkansas public employee retirement plan shall be to establish and receive contributions that, expressed as percentages of active member payroll, will remain approximately level from generation to generation of state citizens. More specifically, contributions received each year shall be sufficient both:
- (1) To fully cover the costs of benefit commitments being made to members for their service being rendered in that year; and
  - (2)(A) To make a level payment that if paid annually over a reasonable period of future years will fully cover the unfunded costs of benefit commitments for service previously rendered.

(B) Alternatively, if the costs of benefit commitments for service previously rendered are overfunded, the plan may deduct a level payment that if deducted annually over a reasonable period of future years will fully liquidate the overfunded portion of such costs.

(b) Each state public employee retirement plan shall cause an actuarial valuation of the plan or fund to be made at least biennially, and preferably annually, to determine how well the plan is meeting the objectives set forth in subsection (a) of this section.

(c) The employer contribution rates to the retirement systems shall be as follows:

(1)(A) For the Arkansas Teacher Retirement System, the Board of Trustees of the Arkansas Teacher Retirement System shall establish employer contribution rates prospectively each year.

(B) The employer contribution rates shall be based on the actuary's determination of the rate required to fund the plan as necessary to meet the general financial objective set forth in subsection (a) of this section.

(C) The employer contribution rates shall be the rates determined by the Board of Trustees of the Arkansas Teacher Retirement System under § 24-7-401(c) and based on the annual actuarial valuation of the Arkansas Teacher Retirement System;

(2) For the State Police Retirement System, twenty-two percent (22%); and

(3)(A) For the Arkansas Public Employees' Retirement System, the Board of Trustees of the Arkansas Public Employees' Retirement System shall establish employer contribution rates prospectively each year, and the rates shall be based on the actuary's determination of the rate required to fund the plan in accordance with the objectives set forth in subsection (a) of this section.

(B) The employer contribution rates shall be the rates determined by the annual actuarial valuation.

(d) Subsection (c) of this section shall not be construed as affecting in any way the existing methods of determining the years of credited service for computing benefits or determining retirement eligibility.

**History.** Acts 2001, No. 151, § 8; 2003, No. 340, § 1; 2005, No. 1968, § 1; 2006 (1st Ex. Sess.), No. 19, § 8; 2007, No. 403, § 1; 2019, No. 427, § 1.

**Amendments.** The 2019 amendment deleted "for the fiscal years ending June 30, 2008, and June 30, 2009" preceding "the Board of Trustees" in (c)(1)(A); sub-

stituted "as necessary to meet the general financial objective" for "in accordance with the objectives" in (c)(1)(B); substituted "under § 24-7-401(c) and based on the annual actuarial valuation of the Arkansas Teacher Retirement System" for "based on the annual actuarial valuation" in (c)(1)(C); and deleted (c)(1)(D).

## 24-2-702. Reports.

(a) Each Arkansas public employees' retirement system shall have an annual financial audit performed by Arkansas Legislative Audit and prepared in accordance with the financial accounting and reporting



standards set forth for public pension plans by the Governmental Accounting Standards Board.

(b)(1) In addition, if approved by the board of trustees of an Arkansas public employees' retirement system, a system may also select another independent auditor to perform a separate financial audit of the respective system.

(2) Prior to entering the contract for the additional audit, the public employees' retirement system shall provide the Legislative Joint Auditing Committee the reasons, in writing, for the need of the additional financial audit.

(3) All contracts for audits shall be in compliance with the state's fiscal laws and rules.

(4) A copy of each audit report prepared by another independent auditor shall be provided to the Legislative Joint Auditing Committee, the Legislative Council, and the Governor.

**History.** Acts 2001, No. 151, § 8; 2019, substituted “rules” for “regulations” in No. 315, § 2847. (b)(3).

**Amendments.** The 2019 amendment

### 24-2-703. Tax exemptions.

(a) The assets of the Arkansas Public Employees' Retirement System, the State Police Retirement System, the Arkansas Judicial Retirement System, the Arkansas State Highway Employees' Retirement System, and the Arkansas Teacher Retirement System are exempt from taxes by the state or any political subdivision or agency thereof.

(b)(1) It is the purpose of this section to provide equitable tax treatment to persons receiving benefits from alternate publicly supported retirement or annuity plans of the state's colleges and universities and the Division of Higher Education.

(2) It is not the intent of this section to reduce the income tax exemption provided by law to any person in regard to retirement or survivor benefits.

**History.** Acts 2001, No. 151, § 8; 2019, substituted “Division of Higher Education” for “Department of Higher Education” in (b)(1). No. 910, § 2364.

**Amendments.** The 2019 amendment

## CHAPTER 4

### ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. FUNDS AND MANAGEMENT OF ASSETS.
3. MEMBERSHIP.
4. EMPLOYER AND EMPLOYEE CONTRIBUTIONS.
5. CREDITED SERVICE AND ELIGIBILITY FOR BENEFITS.
6. BENEFITS.

## SUBCHAPTER

7. PROVISIONS APPLICABLE TO PARTICULAR EMPLOYEES.
8. DEFERRED RETIREMENT OPTION PLAN.
9. ARKANSAS RETIREMENT PLAN.
10. RETIREMENT BENEFITS.
11. CONTRIBUTIONS OF MEMBERS TO THEIR DEPOSIT ACCOUNTS.

**A.C.R.C. Notes.** Acts 2019, No. 910, § 6341, provided: "Effect of transfer on retirement system membership and health insurance plan participation.

"(a) As used in this section, 'retirement system' means:

"(1) The Arkansas Teacher Retirement System, established by the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;

"(2) The Arkansas State Highway Employees' Retirement System, established by § 24-5-103;

"(3) The Arkansas Public Employees' Retirement System, established by § 24-4-103;

"(4) The State Police Retirement System, established by § 24-6-203;

"(5) The Arkansas Judicial Retirement System, established by § 24-8-201 et seq.;

"(6) An alternate retirement plan for:

"(A) A college, university, or the Department of Higher Education provided for under § 24-7-801 et seq.; and

"(B) A vocational-technical school or the Department of Career Education provided for under § 24-7-901 et seq.;

"(7) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.; and

"(8) A firemen's relief and pension fund or a policemen's pension and relief fund provided for under § 24-11-101 et seq.

"(b) If this act results in an employee who is a current member of a retirement system prior to the effective date of this act being transferred to or affiliated with a cabinet-level department that is covered by a different retirement system than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act by written election and notice to the new employer and affected retirement system, make a one-time choice to:

"(1) Remain in his or her same retirement system prior to the effective date of this act, under the same conditions then provided by law or as may later be provided by law; or

"(2) Become a member of the retirement system of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions for a reciprocal member to be transferred as an active member to a reciprocal system as currently provided by law under the system to which the reciprocal member is transferred.

"(c) If this act results in an employee being transferred to or affiliated with a cabinet-level department that is covered by a different health insurance plan than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act, make a one-time choice between:

"(1) Continuing to participate in his or her health insurance plan prior to the effective date of this act, under the same conditions then provided by law or as may later be provided by law; or

"(2) Participating in the health insurance plan of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions then provided by law or as may later be provided by law.

"(d)(1)(A) A retirement system may issue policies establishing the procedure for an employee to exercise benefit options under subsection (b) of this section.

"(B) The State and Public School Life and Health Insurance Board may issue policies establishing the procedure for an employee to exercise benefit options under subsection (c) of this section.

"(2) A policy under subdivision (d)(1) of this section is not a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq."



SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 24-4-101. Definitions.
- 24-4-104. Board of trustees — Creation — Members.
- 24-4-105. Board of trustees — Meetings — Powers and duties.

SECTION.

- 24-4-106. Limitations — Definition.
- 24-4-108. Implementation of contributory component.

**Effective Dates.** Acts 2017, No. 311, § 4: Mar. 1, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that when a vacancy occurs in the Arkansas Public Employees’ Retirement System, the Governor must be able to immediately appoint a trustee to fill the vacancy; that on the effective date of this act, the provisions of this act should apply to the current members of the board; and that this act shall become effective immediately in order to maintain the stability of the system and to avoid undue harm to the members and benefit recipients of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto.”  
Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

24-4-101. Definitions.

As used in this act:

- (1) “Accumulated contributions” means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the member’s deposit account, together with regular interest as may have been credited thereon;
- (2) “Actual service” means service credited at the rate of one (1) month for each month of service;
- (3) “Actuarial equivalent” means a benefit of equal reserve value when “reserve” means the present value of all payments to be made on account of any benefit based upon such reasonable rates of interest and tables of experience as a plan shall adopt from time to time;

(4) "Actuary" means a qualified actuary with experience in retirement plan financing. Membership in the American Academy of Actuaries shall be sufficient for a person to be deemed a qualified actuary;

(5) "Age" means age on last birthday;

(6)(A) "Annuity" means a monthly amount payable from funds of the Arkansas Public Employees' Retirement System throughout the life of a person.

(B) All annuities shall be paid in equal monthly installments;

(7) "Annuity reserve" means the present value of an annuity computed upon the basis of mortality and other such tables of experience and regular interest, as the Board of Trustees of the Arkansas Public Employees' Retirement System shall adopt;

(8) "Beneficiary" means any person except a retirant who is receiving or is designated by a member to receive a plan benefit;

(9) "Benefit program" means a schedule of benefits or benefit formulas from which the amounts of benefits can be determined;

(10) "Board" means the Board of Trustees of the Arkansas Public Employees' Retirement System, as created in this act;

(11)(A) "Compensation" means the recurring remuneration paid a member by public employers for personal services rendered by a member in a position covered by an employer participating in the Arkansas Public Employees' Retirement System.

(B) The following are recurring remuneration for personal services for the purposes of determining retirement benefits:

(i) Career service recognition payments paid to a member under § 21-5-106;

(ii) Payments made to a member under § 21-5-1101, including without limitation a lump-sum payment;

(iii)(a) Except as provided in subdivision (11)(B)(iii)(b) of this section, payments made to a member under § 14-14-1206(a), including without limitation a bonus or lump-sum payment.

(b) The maximum amount of the bonus or lump-sum payment that will be considered to be compensation during the last year of a member's employment is the lesser of five percent (5%) of the current year's salary or the amount of the bonus or lump-sum payment that was received by the member during the previous year of employment;

(iv)(a) Except as provided in subdivision (11)(B)(iv)(b) of this section, a bonus or lump-sum payment made to a municipal employee as provided in the municipality's annual budget under § 14-42-308.

(b) The maximum amount of the bonus or lump-sum payment that will be considered to be compensation during the member's last year of employment is the lesser of five percent (5%) of the current year's salary or the amount of the bonus or lump-sum payment that was received by the member during the previous year of employment; and

(v) Lump-sum payments made to a member under § 21-5-211 and § 21-5-219 [repealed].

(C) If a member's compensation includes either lodging or meals, or both, exclusive of travel expense, the cash value of the lodging and



meals shall be fixed by the board, not to exceed the amount the employee is required to report for federal income tax purposes.

(D) Except as provided in subdivision (11)(C) of this section, "compensation" includes only the base salary of the member and does not include a multiplier or other special salary allowance used to increase a person's salary as authorized by the General Assembly;

(12) "Contributory member" means:

(A) A person who was a member of the Arkansas Public Employees' Retirement System prior to January 1, 1978, and who continues to contribute six percent (6%) of his or her compensation to the system. However, the rate will be five percent (5%) on and after July 1, 2005; or

(B) A member first hired on or after July 1, 2005, or a noncontributory member who elects to become a contributory member under § 24-4-1101 et seq.;

(13) "County" means any county in the state and includes all agencies, offices, departments, boards, commissions, and county-supported institutions that are duly constituted agencies of the county;

(14)(A) "County employees" means all employees whose compensations are payable, either directly or indirectly, by county participating public employers and includes employees of the Association of Arkansas Counties.

(B) In any case of doubt as to who is a county employee within the meaning of this act, the board shall have the final power to decide the question;

(15)(A) "Credited service" means the sum of the prior service and current service to the extent credited a member by the board, in accordance with the provisions of § 24-4-521.

(B) Any member first hired on or after July 1, 2005, to a covered position whose service is credited at a rate other than that defined in subdivision (2) of this section shall accrue that credit on no more than ten (10) actual years of service;

(16)(A) "Current service" means service rendered to a public employer by a member from and after the date he or she became a member.

(B) In the case of a nonstate employee, service rendered by the employee to a public employer in the period from June 30, 1957, to the date his or her employer became a participating public employer, which period is called interim current service, shall be included as current service, but only if the employee satisfies the conditions set forth in Acts 1965, No. 153, § 10 [repealed];

(17)(A)(i)(a) "Employees" means all officers and employees of any office, agency, board, commission, including the Division of Higher Education, or department of a public employer whose compensations were or are payable from funds appropriated by the public employer and all otherwise eligible employees whose compensations were or are payable in whole or part from federal funds, as well as the official court reporters and stenographers of the circuit and chancery courts

of the state and all of the prosecuting attorneys of the judicial districts of Arkansas.

(b) In addition, effective July 1, 1983, the term "employees" shall include those persons who are eligible for benefits from the Teachers Insurance and Annuity Association but who are otherwise eligible for participation in the Arkansas Public Employees' Retirement System due to employment with a public employer.

(ii) Any person who has previously been denied coverage under the Arkansas Public Employees' Retirement System because the person was or is paid from a grant instead of funds appropriated by the public employer shall from July 1, 1991, become a member of the system if in an otherwise eligible position due to being an employee of a public employer, and a member may at his or her option receive credit for service rendered before that date as an employee paid from a grant, subject to the following conditions:

(a) The member is a participating employee covered under the Arkansas Public Employees' Retirement System at the time of the purchase;

(b) The member furnishes proof in a form required by the Arkansas Public Employees' Retirement System of the service and compensation received;

(c) The member pays or causes to be paid all employee contributions at the rate and on the compensation that would have been paid had he or she been a member during that time, all employer contributions based on the employer normal cost from the most recently completed regular annual actuarial valuation and the compensation that would have been paid had he or she been a member during that time, and regular interest on the employee and employer contributions. The interest shall be computed from the date the service was rendered to the date the payment is received by the Arkansas Public Employees' Retirement System. The member may purchase all of the service or any portion thereof in multiples of one (1) year;

(d) The payment of funds shall be made in one (1) lump sum; and

(e) Any person who, prior to the effectiveness of this provision, has been removed from membership in the Arkansas Public Employees' Retirement System because of eligibility for membership in a local firemen's pension fund as a volunteer firefighter may restore the refunded service and establish subsequent service by paying or causing to be paid to the Arkansas Public Employees' Retirement System the refunded contributions and the legally required contributions for subsequent service.

(B) Excepting members of the General Assembly and those persons participating in a local firemen's relief and pension fund because of their status as volunteer firefighters, those persons who otherwise meet the definition of employees in positions covered by the Arkansas Public Employees' Retirement System while also serving as volunteer firefighters or volunteer police officers in a separate position covered



by the Arkansas Local Police and Fire Retirement System, and those persons who have dual full-time employment in separate positions covered by the Arkansas Public Employees' Retirement System and the Arkansas Local Police and Fire Retirement System respectively, the term "employees" shall not include persons who are members of any other retirement system, excepting Social Security, which retirement system is supported by state funds or is authorized by the laws of the state. In addition, the term "employees" specifically shall not include the following:

(i) Persons in the employ of the Division of Arkansas State Police who are members of the State Police Retirement System;

(ii) Persons in the employ of the Department of Education or the Arkansas Teacher Retirement System, except as otherwise provided by law;

(iii) Persons in the employ of the University of Arkansas or any other state-supported institution of higher learning, except as otherwise provided by law;

(iv) Justices of the Supreme Court, judges of circuit courts, or judges of chancery courts;

(v) Persons in the employ of the General Assembly who are employed on a less than full-time regular annual salary basis, except that any person who has served or who shall serve during at least six (6) legislative sessions as Chief Clerk of the House of Representatives and who has served in the employ of the General Assembly during at least twelve (12) previous legislative sessions shall be eligible to receive credited service in the Arkansas Public Employees' Retirement System for any period of employment with the General Assembly since July 1, 1957, but only if the employee is, or was, an active member of the system with at least ten (10) years of credited service and only if the employee pays or causes to be paid all employee contributions at the rate and on the compensation that would have been paid had he or she been a member of the system during those periods of time, all employer contributions based on the employer normal cost from the most recently completed regular annual actuarial valuation and the compensation that would have been paid had he or she been a member during those periods of time, and regular interest on the employee and employer contributions computed from the date of service to the date the payment is received by the system;

(vi) Persons who are in the employ of the Arkansas Department of Transportation;

(vii) Persons employed with the intent of working less than ninety (90) calendar days;

(viii) Persons who are employed for a period of more than ninety (90) consecutive calendar days but who do not qualify as full-time employees shall be excluded from membership. A person shall be considered a full-time employee if that person works at least eighty (80) hours per month during a period of ninety (90) consecutive calendar days;

(ix)(a)(1) Persons whose rate of pay does not constitute employment that is substantially gainful shall be excluded from membership.

(2) A rate of pay less than the federal minimum wage for the year shall not be considered employment that is substantially gainful.

(b) A tipped food service employee of the Department of Parks, Heritage, and Tourism who is guaranteed the prevailing minimum wage by the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., as it existed on January 1, 2009, is in employment that is substantially gainful.

(c) The employee and employer contributions for a tipped food service employee of the Department of Parks, Heritage, and Tourism is computed based on the tipped food service employee's hourly rate of pay;

(x) Persons who are first employed or those who are reemployed as participants on or after July 1, 1979, under the Comprehensive Employment and Training Act [repealed]. However, those persons participating in the program prior to July 1, 1979, shall continue to be members of the Arkansas Public Employees' Retirement System while employed by a participating public employer;

(xi) Any person previously denied coverage by the Arkansas Public Employees' Retirement System because that person was eligible for membership in but did not participate in another retirement system that is supported by state funds or that is authorized by the laws of the state, shall become a member of the Arkansas Public Employees' Retirement System from the date of July 1, 1999, if in an otherwise eligible position due to employment with a participating employer. Any person previously denied coverage by the Arkansas Public Employees' Retirement System because that person was eligible for or receiving benefits from another retirement system supported by state funds or that is authorized by the laws of the state shall become a member of the Arkansas Public Employees' Retirement System from the date of July 1, 1999, if in an otherwise eligible position due to employment with a participating employer. That person may receive, at the employee's option, credit for service rendered to a participating public employer before that date, subject to the following conditions:

(a) The member is a participating employee covered under the Arkansas Public Employees' Retirement System at the time of the purchase;

(b) The member furnishes proof in a form required by the Arkansas Public Employees' Retirement System of the service and compensation received;

(c) The member pays or causes to be paid all employee contributions at the rate and on the compensation that would have been paid had he or she been a member during that time, all employer contributions based on the employer normal cost from the most recently completed regular annual actuarial valuation and the com-



pensation that would have been paid had he or she been a member during that time, and regular interest on the employee and employer contributions. The interest shall be computed from the date the service was rendered to the date the payment is received by the Arkansas Public Employees' Retirement System. The member may purchase all of the service or any portion thereof in multiples of one (1) year; and

(d) The payment of funds shall be made in one (1) lump sum;

(xii) The surviving spouse of any person deemed erroneously enrolled due to receipt of a benefit from another retirement system supported by state funds or that is authorized by the laws of the state but whose service had not been refunded at or before the date of death shall be eligible to receive a benefit under the provisions of § 24-4-608, provided that the person was an employee of the participating employer on the date of death. The monthly annuity shall be payable on the first day of the month following the month of application and shall be retroactive to the date the benefit would have been otherwise payable as provided for in § 24-4-608; and

(xiii) Any person previously denied coverage by the Arkansas Public Employees' Retirement System because that person was employed in dual full-time positions covered by the Arkansas Public Employees' Retirement System and the Arkansas Local Police and Fire Retirement System, respectively, shall become a member of both systems from and after the date of July 1, 2001, if in otherwise eligible positions with participating employers. The person may receive at the employee's option credit for service rendered to a participating public employer before that date, subject to the following conditions:

(a) The member is a participating employee covered under the Arkansas Public Employees' Retirement System at the time of the purchase;

(b) The member furnishes proof in a form required by the Arkansas Public Employees' Retirement System of the service and compensation received;

(c) The member pays or causes to be paid all employee contributions at the rate and on the compensation that would have been paid had the person been a member during that time, all employer contributions based on the employer normal cost from the most recently completed regular annual actuarial valuation and the compensation that would have been paid had the person been a member during that time, and regular interest on the employee and employer contributions. The interest shall be computed from the date the service was rendered to the date the payment is received by the Arkansas Public Employees' Retirement System. The member may purchase all of the service or any portion thereof in multiples of one (1) year; and

(d) The payment of funds shall be made in one (1) lump sum.

(C) In any case of doubt as to who is an employee within the meaning of this act, the board shall have the final power to decide the question;

(18) "Final average compensation" means the average of the highest annual compensations paid a member during any period of three (3) years of credited service with a public employer as calculated under § 24-4-623;

(19) "General Assembly" means the General Assembly of the state;

(20) "Intergovernmental Juvenile Detention Council" means the Intergovernmental Juvenile Detention Council of the Tenth Judicial District created by uncoded Acts 1995, No. 899, which has chosen by a majority vote of the council to participate in the Arkansas Public Employees' Retirement System;

(21) "Joint county and municipal sanitation authority" means any sanitation authority created under the Joint County and Municipal Solid Waste Disposal Act, § 14-233-101 et seq., which has chosen by a majority vote of its full-time employees to participate in the Arkansas Public Employees' Retirement System;

(22) "Local units of government" means those entities participating in the Arkansas Public Employees' Retirement System under the provisions of § 24-4-746;

(23) "Member" means any person who is included in the membership of the Arkansas Public Employees' Retirement System;

(24)(A) "Municipal employees" means all employees whose compensations are payable, either directly or indirectly, by participating municipal public employers and includes employees of the Arkansas Municipal League, employees of the water and sewer system of any city divided by a state line, and employees of the Arkansas Local Police and Fire Retirement System.

(B) "Municipal employees" shall not include members of a municipal firemen's or policemen's pension fund while the member is accruing credited service in that system, excepting those members of a municipal firemen's pension fund who are members solely because of their status as volunteer firefighters.

(C) In any case of doubt as to who is a municipal employee within the meaning of this act, the board shall have the final power to decide the question;

(25) "Municipality" means any incorporated city or town in the state and includes all agencies, offices, departments, and commissions of the city or town;

(26) "Noncontributory member" means a person who does not contribute a portion of his or her compensation to the Arkansas Public Employees' Retirement System;

(27) "Nonstate employees" means county employees, municipal employees, rural waterworks facilities board employees, regional airport authority employees, border municipal airport employees, public facilities board employees, regional solid waste management board employees, joint county and municipal sanitation authority employees, re-



gional water distribution board employees, the employees of economic development districts recognized as planning and development districts under § 14-166-202, school employees, public water authority employees, and the employees of the Intergovernmental Juvenile Detention Council;

(28) "Normal retirement age" means, for a member, the youngest of the following ages:

(A) Age sixty (60) and with twenty (20) or more years of actual service commencing before January 1, 1978, for a contributory member; or

(B) Age sixty-five (65) with five (5) or more years of actual service, except for a member of the General Assembly who must have ten (10) or more years of actual service if he or she only has service as a member of the General Assembly;

(C) If the provisions of § 24-4-521 are used to determine any portion of total credited service, then the age upon completion of thirty-five (35) years of credited service, but in no event to an age younger than fifty-five (55);

(D) For a noncontributory member with credited service for employment as a public safety employee or as a sheriff, age sixty-five (65) reduced by one (1) month for each two (2) months of such credited service; but in no event to an age younger than fifty-five (55), except in the case of a sheriff who has a minimum of ten (10) years of actual service as a sheriff or who has eight (8) years of actual service as a sheriff and a minimum of two (2) years of service in another state-supported retirement system, for whom the minimum retirement age shall be fifty-two (52);

(E) The age upon completion of twenty-eight (28) years of credited service, if the provisions of § 24-4-521 are not used to determine any portion of the credited service;

(F) For a member of the General Assembly with twelve (12) years of actual service, ten (10) of which must be as a member of the General Assembly, at age fifty-five (55). A member of the General Assembly who was either serving in the General Assembly on July 1, 1979, or held an elected office on July 1, 1979, shall be eligible to retire with seventeen and one-half (17½) years of actual service regardless of age;

(G) An elected state constitutional officer shall be eligible to retire with twenty-eight (28) years of credited service at age fifty-five (55); and

(H) Notwithstanding subdivision (28)(C) of this section, in the case of a deputy sheriff who has a minimum of twenty-five (25) years of actual service as a deputy sheriff, the minimum retirement age shall be fifty-two (52);

(29) "Participating public employer" means:

(A) Any county, municipality, rural waterworks facilities board, regional airport authority, border municipal airport authority, public facilities board, regional solid waste management board, joint county

and municipal sanitation authority, suburban improvement district under § 14-92-502, public water authority, or regional water distribution board in the state whose employees are included in the membership of the Arkansas Public Employees' Retirement System;

(B) The employees of the Intergovernmental Juvenile Detention Council of the Tenth Judicial District who are included in the membership of the Arkansas Public Employees' Retirement System; or

(C) A public rehabilitative services corporation or local unit of government as provided for in § 24-4-746;

(30)(A) "Prior service", in the case of a state or municipal employee, means personal service rendered by the employee to a public employer prior to July 1, 1957.

(B) The term "prior service", in the case of a county employee, means personal service rendered by the employee to a public employer prior to July 1, 1959;

(31) "Public employer" means the State of Arkansas or any participating public employer;

(32) "Public facilities board" means any public facilities board created under the Public Facilities Boards Act, § 14-137-101 et seq., which has chosen by a majority vote of the full-time employees to participate in the Arkansas Public Employees' Retirement System;

(33) "Public Rehabilitation Services Corporations" means those entities participating in the Arkansas Public Employees' Retirement System under the provisions of § 24-4-746;

(34)(A) "Public safety member" means, except public safety members covered under § 24-4-1004, a member whose covered employment:

- (i) Is for personal services as a police officer or firefighter; and
- (ii) Began before July 1, 1997.

(B)(i)(a) "Police officer" means a permanent employee whose primary duty is law enforcement of a municipal police department, a county sheriff's office, or the Division of Arkansas State Police, including a probationary police officer.

(b) "Police officer" includes a wildlife officer of the Arkansas State Game and Fish Commission, a drug enforcement officer of a judicial drug taskforce, a civilian firefighter of the Department of the Military covered under § 24-4-1004, and all officers and the Chief of the State Capitol Police within the office of the Secretary of State.

(c) "Police officer" does not include a person who has not satisfied the training requirements to be a police officer established by the Arkansas Commission on Law Enforcement Standards and Training under § 12-9-106.

(ii) A police officer who, although assigned to administrative duties, is still subject to call for service at patrol duty or duty in the field or is subject to call for duties in emergency situations requiring the officer to be armed with a firearm shall be considered to have the primary duty of law enforcement for the purpose of this subdivision (34)(B).



(iii) The term "police officer" shall not include any civilian employee of a police department or any person temporarily employed as a police officer during an emergency.

(C)(i) "Firefighter" means any regular employee of a fire department whose primary duty is fire fighting, including probationary firefighters.

(ii) "Firefighter" shall not include any civilian employee of a fire department or any person temporarily employed as a firefighter during an emergency.

(D)(i) "Public safety member" shall not include a member whose employment as a police officer or firefighter commenced on or after July 1, 1997, except as provided for public safety members covered under § 24-4-1004.

(ii)(a) If a public safety member leaves his or her employment as a police officer or firefighter for employment as a police officer or firefighter in a position covered by the Arkansas Public Employees' Retirement System, Arkansas State Highway Employees' Retirement System, State Police Retirement System, or Arkansas Local Police and Fire Retirement System and returns to his or her previous employment as a police officer or firefighter, the public safety member shall resume receiving credited service at one and one-half (1½) times the regular rate for crediting service.

(b) A person eligible to resume receiving public safety credit prior to July 31, 2007, shall receive credited service for his or her return to employment as a police officer or firefighter at one and one-half (1½) times the regular rate for crediting service.

(E) A public safety member who receives or has received credited service at one and one-half (1½) times the regular rate for crediting service may change employers and continue to receive credited service at one and one-half (1½) times the regular rate for crediting service, provided:

(i) The person is employed as a public safety officer within six (6) months of termination from employment as a public safety member; and

(ii) The employer provides public safety officers credited service at one and one-half (1½) times the regular rate for crediting service;

(35) "Public water authority" means a public water authority created under the Water Authority Act, § 4-35-101 et seq., that has elected by a majority vote of its board of directors to participate in the Arkansas Public Employees' Retirement System;

(36) "Regional airport authority" means any regional airport authority created under the Regional Airport Act, § 14-362-101 et seq., which was formed after January 1, 1990, and which has chosen to participate in the Arkansas Public Employees' Retirement System;

(37) "Regional solid waste management board" means any regional solid waste management board defined under § 8-6-701 et seq. which has chosen by a majority vote of the full-time employees to participate in the Arkansas Public Employees' Retirement System;

(38) "Regional water distribution board" means any regional water distribution board created under The Regional Water Distribution District Act, § 14-116-101 et seq., which has chosen by a majority vote of the full-time employees to participate in the Arkansas Public Employees' Retirement System;

(39)(A) "Regular interest" means such rates of interest per annum, compounded annually, as the board shall prescribe from time to time.

(B) However, for circumstances entered into July 1, 1985, or later, when payments are payable to the Arkansas Public Employees' Retirement System by a member together with regular interest thereon, the rate of interest shall be the same for all circumstances and shall be six percent (6%) per annum unless changed by the board;

(40) "Retirant" means a person who:

(A) Is a vested member of the Arkansas Public Employees' Retirement System;

(B) Has filed an effective retirement application with the system that has not been cancelled; and

(C) Is entitled to a plan annuity upon properly terminating employment under § 24-4-520;

(41) "Retirement" means a member's withdrawal from the service of a public employer, with an annuity payable from funds of the Arkansas Public Employees' Retirement System;

(42) "Rural waterworks facilities board" means a rural waterworks facilities board created under the Rural Waterworks Facilities Boards Act, § 14-238-101 et seq.;

(43) "Social Security" means the Social Security old age, survivors', and disability insurance program;

(44) "State" means the State of Arkansas and includes all agencies, offices, departments, boards, commissions, and state-supported institutions that are duly constituted agencies of the state;

(45)(A) "State employees" means all otherwise eligible employees whose compensations were, or are, payable from funds appropriated by the state and includes all employees whose compensations were, or are, payable in whole or in part from federal funds.

(B) In any case of doubt as to who is a state employee within the meaning of this act, the board shall have the final power to decide the question;

(46) "System" means the Arkansas Public Employees' Retirement System; and

(47) "Border municipal airport authority" means a border municipal airport authority created under the Municipal Airports Act, § 14-361-101 et seq., that chooses to participate in the Arkansas Public Employees' Retirement System.

**History.** Acts 1957, No. 177, § 1; 1959, No. 859, § 1; 1983, No. 42, §§ 1, 2; 1983, No. 42, § 1; 1961, No. 64, § 1; 1965, No. 575, § 1; 1985, No. 910, § 1; 1985, No. 47, § 1; 1967, No. 289, § 1; 1975, No. 907, § 7; 1975 (Extended Sess., 1976), No. 938, § 7; A.S.A. 1947, § 12-2501; Acts 1987, No. 461, § 1; 1987, No. 493, § 1; 1987, No. 461, § 1; 1987, No. 493, § 1; 1987, No. 988, §§ 1, 2; 1989, No. 1159, §§ 1, 2; 1979, No. 715, § 8; 1981, reen. 1987, No. 988, §§ 1, 2; 1989, No.



160, § 3; 1991, No. 331, § 1; 1991, No. 757, § 2; 1993, No. 286, §§ 1-3; 1993, No. 432, §§ 6, 7; 1993, No. 975, § 3; 1995, No. 398, §§ 1-3; 1995, No. 846, § 1; 1995, No. 1292, §§ 1-3; 1997, No. 76, §§ 2-4; 1997, No. 299, § 7; 1997, No. 639, § 1; 1997, No. 1137, § 2; 1999, No. 325, § 6; 1999, No. 865, § 1; 2001, No. 151, § 10; 2001, No. 764, § 1; 2001, No. 1616, § 1; 2005, No. 2084, §§ 2, 3; 2007, No. 176, § 3; 2007, No. 295, § 1; 2007, No. 299, § 1; 2007, No. 799, § 3; 2007, No. 850, § 1; 2009, No. 616, § 2; 2009, No. 774, § 1; 2009, No. 1277, § 1; 2011, No. 20, § 3; 2011, No. 38, § 2; 2011, No. 140, § 1; 2011, No. 978, § 2; 2013, No. 332, §§ 1-5; 2017, No. 707, § 268; 2019, No. 449, §§ 2-4; 2019, No. 910, §§ 2365, 2366; 2021, No. 370, § 1; Acts 2021, No. 519, §§ 1-3; 2021, No. 687, § 1.

**Amendments.** The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (17)(B)(vi).

The 2019 amendment by No. 449 inserted "public water authority employees" in (27); inserted "public water authority"

in (29)(A); and added the definition for "Public water authority".

The 2019 amendment by No. 910 substituted "Division of Higher Education" for "Department of Higher Education" in (17)(A)(i)(a); and substituted "Department of the Military" for "State Military Department" in (34)(B)(i)(b).

The 2021 amendment by No. 370 deleted (18)(A)(ii) and (iii) and (18)(B) and redesignated former (18)(A)(i) as (18); and added "as calculated under § 24-4-623" in (18).

The 2021 amendment by No. 519 inserted "border municipal airport employees" in (27); inserted "border municipal airport authority" in (29)(A); and added (47).

The 2021 amendment by No. 687, in the introductory language of (17)(B), inserted "relief and" and "those persons who otherwise meet the definition of employees in positions covered by the Arkansas Public Employees' Retirement System while also serving as volunteer firefighters or volunteer police officers in a separate position covered by the Arkansas Local Police and Fire Retirement System".

## CASE NOTES

### County Employees.

All three definitions ("County employees", "Employees", and "Nonstate employees") in this section had to be applied to determine the county nursing home employees' eligibility for membership in the Arkansas Public Employees' Retirement System. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

There is no irreconcilable conflict that compels a disjunctive reading of the language in the introductory paragraph of § 24-4-302 that refers to three definitions in this section; read together, the definitions of "County employees" and "Employees" in this section harmoniously provide that "county employees" means all employees who are paid, either directly or indirectly, from funds appropriated by

county participating public employers. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Assuming that the nursing-home administrative boards and their respective counties were synonymous under the definitions of "County employees" and "Employees" in this section, the Board of Trustees of the Arkansas Public Employees' Retirement System's finding that the former employees of county-owned nursing homes were not paid from appropriated funds as required by the definition of "Employees" in this section was affirmed as no ordinances in the record specifically designated county money for their compensation. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

## 24-4-104. Board of trustees — Creation — Members.

(a) The administration and control of the Arkansas Public Employees' Retirement System shall be vested in a board called the "Board of Trustees of the Arkansas Public Employees' Retirement System".

(b) The board shall consist of the following members:

(1) The Auditor of State, the Treasurer of State, and the Secretary of the Department of Finance and Administration shall be ex officio members;

(2)(A) Three (3) members who are state employees and three (3) members who are nonstate employees to be appointed by the Governor.

(B) Each nonstate employee trustee and each state employee trustee shall have at least five (5) continuous years of service with a public employer or employers and shall be a member of the system.

(C)(i) No more than one (1) of the three (3) members who are nonstate employee trustees appointed by the Governor shall be a retired member of the system.

(ii) No more than one (1) of the three (3) members who are state employee trustees appointed by the Governor shall be a retired member of the system.

(D) The three (3) nonstate employee trustees shall consist of at least one (1) currently elected county judge and at least one (1) mayor.

(E) Subdivisions (b)(2)(B)-(D) of this section do not apply to members appointed under subdivisions (b)(3) and (4) of this section;

(3)(A) Two (2) members who retired from employment covered by the system to be appointed by the President Pro Tempore of the Senate.

(B) One (1) of the members described in subdivision (b)(3)(A) of this section shall be a retired law enforcement officer who is not a retired member of the State Police Retirement System; and

(4)(A) Two (2) members who retired from employment covered by the system to be appointed by the Speaker of the House of Representatives.

(B) One (1) of the members described in subdivision (b)(4)(A) of this section shall be a retired law enforcement officer who is not a retired member of the State Police Retirement System.

(c)(1) The term of office of appointed trustees shall be six (6) years.

(2)(A) The Governor shall declare a vacancy on the board when a:

(i) Nonstate employee trustee leaves the employ of a participating public employer;

(ii) State employee trustee leaves state employment;

(iii) Member who is a nonstate employee trustee retires and there is another retired member of the system who is a nonstate employee trustee on the board; and

(iv) Member who is a state employee trustee retires and there is another retired member of the system who is a state employee trustee on the board.

(B) A vacancy declared under subdivisions (c)(2)(A)(iii) and (iv) of this section shall be for the seat of the newly retired trustee.

(C) The Governor shall appoint a state employee member or a nonstate employee member to fill the vacancy for the remainder of the unexpired term within thirty (30) days of the date on which the vacancy is declared.



(d)(1) Annually, the board shall select from its membership a chair and a vice chair.

(2) The board shall appoint an executive director who shall be the executive administrative officer of the system and shall also be ex officio secretary of the board, but who shall have no vote on questions before the board and who shall be directly responsible to the board.

(3) By resolution duly adopted, the board may delegate to the executive director any of the powers and duties vested in or imposed upon it by law.

(4) Within such limitations as may be contained in legislative appropriations therefor, the executive director, subject to the approval of the board, may employ and fix the compensation of such secretarial, clerical, professional, and other personnel as may be required for the proper administration of the system.

**History.** Acts 1957, No. 177, § 3; 1959, No. 42, § 3; 1965, No. 153, § 4; 1975, No. 732, § 1; 1985, No. 7, § 1; A.S.A. 1947, § 12-2503; Acts 2017, No. 311, §§ 1, 2; 2021, No. 686, § 1.

**A.C.R.C. Notes.** Acts 2017, No. 311, § 3, provided: "This act applies to a member currently serving on the Board of Trustees of the Arkansas Public Employees' Retirement System as of the effective date of this act [March 1, 2017]."

**Amendments.** The 2017 amendment redesignated (b)(2) as (b)(2)(A) and (B); deleted "each nonstate employee trustee and" following "Governor" in (b)(2)(A); in

(b)(2)(B), substituted "five (5)" for "ten (10)" and deleted "or retired member" following "shall be a member"; added (b)(2)(C); and rewrote (c)(2).

The 2021 amendment substituted "the following members" for "nine (9) trustees, as follows" in the introductory language of (b); designated former provisions of (b)(2)(C) as (b)(2)(C)(i) and (ii); added "appointed by the Governor shall be a retired member of the system" in (b)(2)(C)(i); substituted "trustees appointed by the Governor shall be" for "trustees may be" in (b)(2)(C)(ii); and added (b)(2)(D), (b)(2)(E), (b)(3) and (b)(4).

## 24-4-105. Board of trustees — Meetings — Powers and duties.

(a)(1) The Board of Trustees of the Arkansas Public Employees' Retirement System shall hold meetings regularly, at least one (1) meeting in each quarter year, and shall designate the time and place of the meeting.

(2) Special meetings may be held in accordance with such rules as the board shall adopt from time to time.

(3) Five (5) trustees shall constitute a quorum at any meeting of the board, and at least five (5) concurring votes shall be necessary for a decision by the board at any of its meetings.

(b) In addition to such other duties as are imposed upon the board by this act, the board shall:

(1) Make all rules as it shall deem necessary from time to time in the transaction of its business and in administering the Arkansas Public Employees' Retirement System;

(2) Provide for the administrative direction and control of the Executive Director of the Arkansas Public Employees' Retirement System and such clerical staff as may be required in the administration of the system;

(3) Provide for an actuarial valuation of the system as may be deemed necessary by the board;

(4) Exercise discretionary power and authority in the investments of, and disbursements of, the funds of the system, subject to the provisions of this act;

(5) Adopt such mortality and other tables of experience, and a rate or rates of interest, as shall be required in the proper operation of the system;

(6) Perform the duties of trustee without additional compensation therefor, but may receive expense reimbursement in accordance with § 25-16-901 et seq.; and

(7) Do any and all things necessary for the proper administration of the system and for carrying out and making effective the provisions of this act.

**History.** Acts 1957, No. 177, § 3; 1959, No. 42, § 3; 1965, No. 153, § 4; A.S.A. 1947, § 12-2503; Acts 1997, No. 250, § 228; 2019, No. 315, §§ 2848, 2849.

**Amendments.** The 2019 amendment deleted “and regulations” following “rules” in (a)(2) and (b)(1).

#### 24-4-106. Limitations — Definition.

(a)(1)(A) Notwithstanding any provisions to the contrary, it is considered sound public policy to limit contributions by public employers to one (1) state-authorized retirement plan. Accordingly, effective July 1, 1999, employers participating in the Arkansas Public Employees’ Retirement System shall not establish any other state-authorized plan that requires contributions by the employer.

(B) The Board of Trustees of the Arkansas Public Employees’ Retirement System shall promulgate such rules as are required to prohibit the establishment of such plans in the future.

(2) An employer that, in addition to participating in the system, has another state-authorized plan that was in existence on July 1, 1999, shall not be prohibited from:

(A) Changing vendors for the plan;

(B) Adding employees to the plan; or

(C) Modifying a plan pursuant to federal guidelines.

(3) If an employer merges with another employer and either employer has a plan that was in existence on July 1, 1999, then the merged entity may continue to provide the plan for employees of the entity.

(b) The system shall notify all participating employers on an annual basis of the requirements of this section and the board rules governing this subject.

(c) For the purpose of this section, “state-authorized plan” means any retirement plan authorized by state or federal law.

**History.** Acts 1999, No. 884, § 1; 2001, No. 1299, § 1; 2019, No. 315, §§ 2850, 2851.

**Amendments.** The 2019 amendment deleted “and regulations” following “rules” in (a)(1)(B) and (b).



**24-4-108. Implementation of contributory component.**

(a)(1) It shall be considered sound public policy to encourage public employees in the State of Arkansas to participate in the development and growth of their individual retirement benefits.

(2) In order that the Arkansas Public Employees' Retirement System continues to maintain a strong funded status while ensuring that benefits provided to the annuitants and beneficiaries of the system maintain a constant purchasing power, it is incumbent upon the Board of Trustees of the Arkansas Public Employees' Retirement System to consider reintroducing employee contributions as a required provision of the plan structure.

(b)(1) In accordance with the rules of the board, there shall be an annual review of the actuarial valuation of the plan as provided by its actuary.

(2) During each annual review, the board shall consider the actuarial appropriateness of establishing a contributory component within the system.

(3) Issues to be considered are to include, but not be limited to:

(A) Mitigating additional increases in the employer contribution rate;

(B) The establishment of a tax deferral of employee contributions under the Internal Revenue Code of 1986, 26 U.S.C.S. § 414(h), as in effect on January 1, 2003;

(C) The establishment of a time horizon in which current system members may elect contributory status; and

(D) The extent of benefit portability.

(c)(1) Beginning July 1, 2005, the board shall implement and establish a contributory plan for members of the system.

(2) The board shall develop policies and rules from its annual review of the contributory component of the system and, as a minimum, the board's rules shall provide for:

(A) The member contribution rate;

(B) The annual multiplier rate for benefits that a contributory member of the system shall receive upon becoming eligible to receive a retirement benefit;

(C) The combining of contributory and noncontributory service together to receive a retirement benefit from the system; and

(D) Any other contributory qualifications or requirements necessary to implement the contributory plan for the system.

**History.** Acts 2003, No. 339, § 1; 2019, No. 315, §§ 2852, 2853.

**Amendments.** The 2019 amendment

deleted "and regulations" following "rules" in (b)(1); and substituted "rules" for "regulations" twice in (c)(2).

## SUBCHAPTER 2 — FUNDS AND MANAGEMENT OF ASSETS

### SECTION.

24-4-201. Arkansas Public Employees' Retirement System Fund — Creation — System accounts.

24-4-202. Arkansas Public Employees' Retirement System Fund — Contributions.

### SECTION.

24-4-207. Bonds — Payments on vouchers and warrants — Adjustment of erroneous payments.

24-4-213. Socially responsible investments.

**Effective Dates.** Acts 2019, No. 448, § 13: Mar. 13, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Public Employees' Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the system are in imminent need of revision; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

### 24-4-201. Arkansas Public Employees' Retirement System Fund — Creation — System accounts.

(a)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Secretary of the Department of Finance and Administration a fund to be known as the "Arkansas Public Employees' Retirement System Fund".

(2) This fund shall consist of trust funds as provided by law and shall be used for the payment of personal services, operating expenses, investments, benefits, refunds, and for such other purposes as may be authorized by law.

(b)(1) The Board of Trustees of the Arkansas Public Employees' Retirement System shall have the authority to establish a division or divisions for the various participating employers as necessary to administer the Arkansas Public Employees' Retirement System.



(2) The retirement system accounts shall be the members' deposit account, the employers' accumulation account, the retirement reserve account, the income account, and such other accounts as the board shall establish from time to time.

**History.** Acts 1957, No. 177, § 4; 1959, No. 42, § 4; 1961, No. 64, § 2; 1981, No. 859, § 16; A.S.A. 1947, § 12-2504; Acts 1997, No. 299, § 8; 1999, No. 308, § 1; 2001, No. 67, § 2; 2001, No. 151, § 11; 2019, No. 910, § 3551.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a)(1).

## **24-4-202. Arkansas Public Employees' Retirement System Fund — Contributions.**

(a)(1) On or after July 1, 2017, the state employer contributions made by a state agency which employs each member provided for in § 24-2-701 shall be:

(A) Reported electronically by the state agency through the Arkansas Public Employees' Retirement System portal; and

(B) Paid by electronic transfer by the state agency.

(2) The employer's contribution shall be paid to the Arkansas Public Employees' Retirement System Fund at the time and with the frequency established by the Board of Trustees of the Arkansas Public Employees' Retirement System and shall be paid concurrently with the contributions made by its employees to the Arkansas Public Employees' Retirement System Fund.

(b)(1) In the case of employees receiving part or all of their compensation from federal funds, the disbursing officer of the agency receiving the federal funds shall transmit such sums to the Arkansas Public Employees' Retirement System Fund from federal funds of the agency.

(2) These sums shall be those sums of money which are necessary to provide the employer contributions provided for in § 24-2-701, based on the portions of the employees' compensation payable from federal funds.

(c)(1) In the case of the Local Government Division of the Arkansas Public Employees' Retirement System, each participating public employer shall pay into the Arkansas Public Employees' Retirement System Fund such sums of money as are necessary to provide the participating public employer's contributions provided for in § 24-2-701.

(2)(A) The participating public employer's contributions shall be paid at the time and with the frequency established by the board and shall be paid concurrently with the contributions made by its employees to the Arkansas Public Employees' Retirement System Fund.

(B) On or after July 1, 2017, the contributions made by a participating public employer shall be made by electronic transfer.

(3) The employer's contributions shall be transmitted to the Arkansas Public Employees' Retirement System Fund in such form and

manner, together with such supporting data, as the board shall prescribe from time to time.

(d) In the case of circuit court reporters, the public employer contributions shall be paid, when directed by the board, by the respective counties in the proportion that each county pays the total salaries of the circuit court reporters.

(e)(1) If any participating public employer fails to remit to the Arkansas Public Employees' Retirement System those moneys which are required by law or rule by the date and at the frequency established by the board, the system shall impose a penalty equal to the actuarially assumed rate of return on investments of the Arkansas Public Employees' Retirement System Fund in the form of interest on an annual basis on the moneys due.

(2) This interest shall be computed on the actual days of delinquency and shall be paid to the system for the purpose of reimbursing the trust fund for the money which would have been earned on the moneys had they been paid when due.

(3) The interest penalty shall be determined by the system on the date the delinquent funds are received, and a statement of the interest shall be sent to the participating public employer.

(4) If the interest penalty or delinquent moneys are not received by the system by the last business day of the month in which the moneys were originally due, then the system shall cause the sums of moneys, including interest, to be transferred from any moneys due the participating public employer from the office of the Treasurer of State or the Department of Education as approved in § 19-5-106(a)(5).

(f)(1) If any participating public employer fails to file with the system the retirement report by the date established by the board, the system shall impose a penalty of one hundred fifty dollars (\$150) for each time the report is late.

(2) A statement of the penalty shall be sent to the participating employer.

(3) If the penalty is not received by the last business day of the month in which the report was due, then the system shall cause the amount to be transferred from any moneys due the participating public employer from the office of the Treasurer of State or the Department of Education as provided in § 19-5-106(a)(5).

(g)(1) A participating public employer shall submit a written request for a temporary waiver to the Board of Trustees of the Arkansas Public Employees' Retirement System on or before July 1, 2017, when the participating public employer is unable to:

(A) Report contributions electronically through the Arkansas Public Employees' Retirement System; or

(B) Pay contributions by electronic transfer.

(2) A request for a temporary waiver shall include a timeline for when the participating public employer will be able to comply with payment and reporting requirements under this section.



(h) A participating public employer shall promptly upon request by the Arkansas Public Employees' Retirement System provide all information requested concerning the status of an employee to the system.

(i) It is the sole responsibility of the reporting participating public employer to ensure that the information provided by the participating public employer, including without limitation the participating public employer's wage reporting and contribution remittances, is accurate.

**History.** Acts 1957, No. 177, § 4; 1959, No. 42, § 4; 1961, No. 64, § 2; 1967, No. 108, § 1; 1977, No. 663, § 1; A.S.A. 1947, § 12-2504; Acts 1993, No. 286, § 4; 1995, No. 398, § 4; 1995, No. 1292, § 4; 1997, No. 76, § 5; 1997, No. 299, § 9; 2001, No. 151, § 12; 2013, No. 332, § 8; 2015, No. 91, § 1; 2019, No. 315, § 2854.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (e)(1).

## **24-4-207. Bonds — Payments on vouchers and warrants — Adjustment of erroneous payments.**

(a)(1) The Executive Director of the Arkansas Public Employees' Retirement System and other employees shall make bonds to cover their liability for the faithful performance of their duties, from time to time as provided for by law.

(2) The cost of the bonds shall be paid from moneys provided for the administrative expenses of the Arkansas Public Employees' Retirement System.

(3) The Secretary of the Department of Finance and Administration is authorized and directed to designate such additional personnel within his or her office and to provide for such services as are necessary for the proper operation of the system.

(b)(1) The Treasurer of State shall pay annuities and make other disbursements authorized by this act only on vouchers signed by the Executive Director of the Arkansas Public Employees' Retirement System and on warrants issued thereon by the Auditor of State.

(2) No voucher or warrant shall be drawn on funds of the system unless it has been previously authorized by a specific or general resolution adopted by the Board of Trustees of the Arkansas Public Employees' Retirement System.

(c)(1)(A) Should any change or error in the records of the system or any audit of a member's annuity calculations result in any person's receiving more or less than the person would have been entitled to receive had the records or the calculations been correct, the board shall correct the error and, as far as is equitable and practicable, shall adjust the payment in accordance with the provisions of this subsection and in such a manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

(B) However, no monthly adjustment of less than one dollar (\$1.00) shall be made.

(2)(A) The board shall have the right to recover any overpayment that any person may have received from funds of the system,

provided the overpayment is determined and the person is so notified within one (1) year of the date of the last overpayment.

(B) If the overpayment is determined at a date later than one (1) year after the date of the last overpayment, the overpayment shall not be recouped by the board unless the overpayment is a result of an error on the part of a member, retirant, or beneficiary.

(C) In all instances where an overpayment is determined, any subsequent payments shall be adjusted to the correct amount.

(3) If it is determined that any person has received an underpayment from the funds of the system, regardless of the date of the determination, the system shall pay in a lump sum to the person the total of any underpayments made prior to the date of determination, and any subsequent payments shall be adjusted to the correct amount.

(4)(A) If the annuity amount is decreased upon the reconsideration, the matters involved in the decrease shall be set forth in writing and shall be subject to review upon the filing of an appeal thereof by the member or annuity recipient.

(B) The redetermination shall be deemed to be final and binding on all parties unless, within twenty (20) days after the mailing of notice of the redetermination to the member's last known address, or twenty (20) days after personal delivery of the notice to the member, an appeal thereof is filed with the Executive Director of the Arkansas Public Employees' Retirement System.

(C) The Secretary of the Department of Finance and Administration shall promptly hear all appeals of annuity determinations or redeterminations and shall conduct such hearings in accordance with procedures set forth by the board.

**History.** Acts 1957, No. 177, § 5; 1959, No. 42, § 5; 1965, No. 153, § 5; 1981, No. 859, § 5; 1983, No. 677, § 6; A.S.A. 1947, § 12-2505; Acts 1993, No. 1093, § 1; 2001, No. 151, § 14; 2011, No. 38, § 3; 2019, No. 448, § 1; 2019, No. 910, §§ 3552, 3553.

**Amendments.** The 2019 amendment

by No. 448 substituted "last" for "first" in (c)(2)(B).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a)(3) and (c)(4)(C).

## 24-4-213. Socially responsible investments.

A decision on whether to invest, not invest, or withdraw from investment the funds of the Arkansas Public Employees' Retirement System shall not be based on a consideration that the location of the investment, fund, company, or any other type of investment vehicle is in the State of Israel.

**History.** Acts 2017, No. 770, § 1.



**SUBCHAPTER 3 — MEMBERSHIP****SECTION.**

24-4-301. Membership as condition to employment.

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**Effective Dates.** Acts 2019, No. 448, § 13: Mar. 13, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Public Employees' Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the system are in imminent need of revision; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the system.

Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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**24-4-301. Membership as condition to employment.**

(a)(1) Except as set forth in this subsection, all state employees, as defined in § 24-4-101(17) and (45), shall become members of the Arkansas Public Employees' Retirement System as a condition of employment.

(2)(A)(i)(a) A person who is first elected as a member of the General Assembly on or after July 1, 1999, shall have his or her employment covered as a regular state employee member in lieu of coverage under special provisions relating to General Assembly members or to elected officials.

(b) However, if the member's only service under an Arkansas retirement plan, as provided under § 24-2-401 et seq., is service as a member of the General Assembly, then the member must have ten (10) or more years of actual service to be eligible for benefits.

(ii)(a) A person who was first elected as a member of the General Assembly before July 1, 1999, may elect to have his or her employment covered as a regular state employee member in lieu of coverage under special provisions relating to General Assembly members or to elected officials. The member may make the election at any time.

(b) However, if the member's only service under an Arkansas retirement plan is service as a member of the General Assembly, then the member must have ten (10) or more years of actual service to be eligible for benefits.

(B) Any member of the General Assembly who was serving in that capacity at the commencement of the Eighty-fourth General Assembly and who had elected not to participate in the Arkansas Public Employees' Retirement System under the provisions of § 24-4-301(a)(2)(A) prior to its amendment by Acts 2003, No. 1403, may elect

to participate and receive current credit in the system. The member is eligible to receive prior service credit for the time he or she was first elected to the General Assembly until the date of election to participate provided that:

(i) The member pays, or causes to be paid, all employer contributions based on the employer's normal cost from the most recent actuarial valuation and the compensation that would have been paid had he or she been a member of the system during that time and regular interest on the employer contributions computed from the date the service was rendered to the date payment is received by the system;

(ii) The payment shall be made in a lump sum; and

(iii) The member may pay for all prior service, or a portion of the prior service, consisting of one-year increments.

(b) All county employees, as defined in § 24-4-101(14), (17), and (27), who are in the employ of a county July 1, 1959, and all persons who became or become county employees in the employ of a county after June 30, 1959, shall become members of the system as a condition of continuing in or obtaining county employment, as the case may be.

(c) All municipal employees, as defined in § 24-4-101(17), (24), and (27), who are in the employ of a municipality as of the date the municipality becomes a participating public employer and all persons who become municipal employees in the employ of a municipality on or after the date it becomes a participating public employer shall become members of the system as a condition of continuing in or entering the employ of the municipality. However, no employee shall be included whose compensation is less than one thousand five hundred dollars (\$1,500) per annum.

(d) All nonstate employees, as defined in § 24-4-101(17), (22), (27), and (33), who are in the employ of a nonstate employer as of the date the nonstate employer becomes a participating public employer and all persons who become nonstate employees in the employ of a nonstate employer on or after the date it becomes a participating public employer shall become members of the system as a condition of continuing in or entering the employ of the nonstate employer.

(e)(1) From and after July 1, 1973, all elected and appointed state and county constitutional officials shall be or become members of the system.

(2) Any current member of the system who has service prior to July 1, 1973, as an elected or appointed constitutional official, which service is not credited to his or her retirement account because the member elected not to become a member of the system during that time, shall receive credited service for that time, but only if:

(A) The person is a contributing member of the system on the date the service is purchased and the person has at the time of purchase at least two (2) years of credited service in the system;

(B) The member buys all of the service rendered during the period of time in which he or she did not participate in the system; and



(C) The member pays or causes to be paid all employee contributions at the rate and on the compensation that would have been paid had he or she been a member of the system during that period of time, all employer contributions based on the employer normal cost from the most recently completed regular annual actuarial valuation and the compensation that would have been paid had he or she been a member during that time, and regular interest on the employee and employer contributions computed from the date the service was rendered to the date the payment is received by the system.

**History.** Acts 1957, No. 177, § 6; 1959, No. 42, § 6; 1961, No. 64, § 3; 1973, No. 586, § 1; 1975, No. 577, § 1; A.S.A. 1947, § 12-2506; Acts 1987, No. 57, § 1; 1997, No. 299, § 12; 1999, No. 705, § 1; 2001, No. 151, § 16; 2003, No. 1403, § 1; 2007, No. 176, § 4; 2019, No. 448, § 2.

**Amendments.** The 2019 amendment inserted "as provided under § 24-2-401 et seq." in (a)(2)(A)(i)(b).

## 24-4-302. County employees included — Exceptions.

### CASE NOTES

#### Eligibility.

All three definitions ("County employees", "Employees", and "Nonstate employees") in § 24-4-101 had to be applied to determine the county nursing home employees' eligibility for membership in the Arkansas Public Employees' Retirement System. Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

There is no irreconcilable conflict that compels a disjunctive reading of the language in the introductory paragraph of this section that refers to three definitions in § 24-4-101 with "and"; read together, the definitions of "County employees" and "Employees" in § 24-4-101 harmoniously provide that "county employees" means all employees who are paid, either directly or indirectly, from funds appropriated by county participating public employers. Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Substantial evidence supported the finding of the Board of Trustees of the

Arkansas Public Employees' Retirement System that former employees of nursing homes owned by counties were not "county employees" under the relevant statutes and were not eligible for membership in the retirement system because their compensation was payable from patient revenues rather than from appropriated funds. Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Assuming that the nursing-home administrative boards and their respective counties were synonymous under the definitions of "County employees" and "Employees" in § 24-4-101, the Board of Trustees of the Arkansas Public Employees' Retirement System's finding that the former employees of county-owned nursing homes were not paid from appropriated funds as required by the definition of "Employees" in § 24-4-101 was affirmed as no ordinances in the record specifically designated county money for their compensation. Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

## SUBCHAPTER 4 — EMPLOYER AND EMPLOYEE CONTRIBUTIONS

### SECTION.

24-4-401. Contributions of members.

**24-4-401. Contributions of members.**

(a)(1) The members' deposit account shall be the account in which members' contributions shall be accumulated with interest as stipulated by § 24-4-209(a) and from which shall be made transfers and refunds of contributions or accumulated contributions as provided in this act.

(2) Upon the retirement of a member, his or her accumulated contributions standing to his or her credit in the members' deposit account shall be transferred to the retirement reserve account.

(b)(1)(A) Until July 1, 2005, the contributions of a contributory member shall be six percent (6%) of the member's annual compensation.

(B)(i) Beginning July 1, 2005, the contribution rate shall be five percent (5%) of the member's annual compensation for a contributory member.

(ii) A person first hired on or after July 1, 2005, is subject to the provisions of § 24-4-1101 et seq.

(C) The member's deposit account shall be credited interest at a rate of four percent (4%) per annum beginning July 1, 2005.

(D)(i) Beginning July 1, 2022, and continuing each following fiscal year, the contribution rate shall be increased in increments of twenty-five hundredths of one percent (0.25%) per fiscal year.

(ii) An increase to the contribution rate under subdivision (b)(1)(D)(i) of this section shall not result in a contribution rate greater than seven percent (7%).

(2) The officer responsible for making up the payroll for each public employer shall cause the contributions provided for in this section to be deducted from the compensation of each member in the employ of a public employer.

(3) The contributions shall be deducted on every payroll, for every payroll period, from the date of the member's entrance into the Arkansas Public Employees' Retirement System to the date his or her membership terminates.

(4) When deducted, each of the amounts shall be paid by the public employer to the Arkansas Public Employees' Retirement System Fund and shall be credited to the individual account in the members' deposit account of the member from whose compensation the contributions were deducted.

(5) The contributions provided for in this section shall be made notwithstanding that the minimum salary or wages for any member shall be thereby changed.

(6) Each member shall be deemed to consent and agree to the deductions made and provided for in this section.

(7) Payment of a member's compensation less deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered to a public employer by the member, except as to benefits provided by this act.



(c)(1) The official designated by the board of each participating public employer shall remit to the board the contributions deducted from the compensations of members in the employ of the employer.

(2) The remittances shall be made in such manner and form, shall be made in such frequency, and shall from time to time be accompanied by such supporting data as the board shall prescribe.

(d) It is expressly guaranteed that all members' contributions shall be held in trust for the exclusive benefit of the individual members and that no part of the funds shall ever be used for any other purpose.

**History.** Acts 1957, No. 177, § 8; 1959, No. 42, § 8; 1965, No. 153, § 6; 1967, No. 108, § 2; 1969, No. 632, § 1; 1971, No. 103, § 2; 1973, No. 666, § 2; 1975, No. 907, § 10; A.S.A. 1947, §§ 12-2508, 12-2508.1; Acts 1997, No. 299, § 13; 2001,

No. 151, § 19; 2005, No. 2084, § 1; 2021, No. 365, § 1.

**Amendments.** The 2021 amendment added (b)(1)(B)(ii) and (b)(1)(D) and redesignated former (b)(1)(B) as (b)(1)(B)(i).

## CASE NOTES

### Settlement Proceeds.

Substantial evidence supported the finding that a school district was responsible for paying the employer contribution to the Arkansas Teacher Retirement System (ATRS) on settlement proceeds a teacher received and that a school district failed to follow the calculation of damages

designated in the settlement as back pay because a 14% employer contribution had to be paid on all salary, and ATRS could treat as salary any remuneration paid to a member for settlement with an employer. *Palestine-Wheatley Sch. Dist. v. Hopkins*, 2016 Ark. App. 112, 484 S.W.3d 682 (2016).

## SUBCHAPTER 5 — CREDITED SERVICE AND ELIGIBILITY FOR BENEFITS

### SECTION.

- 24-4-507. Eligibility for benefits — Credited service.
- 24-4-508. Eligibility for benefits — Retirement generally.
- 24-4-511. Eligibility for benefits — Disability retirement — Definitions.
- 24-4-517. State service under a federal grant — Definition.

### SECTION.

- 24-4-520. Termination required for retirement — Definitions.
- 24-4-521. Credited service generally — Definition.
- 24-4-522. Applicability of benefit provisions.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 20, § 2: Feb. 2, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current coronavirus 2019 (COVID-19) pandemic has impacted the normal functioning of state government, including the procedures that will be used for the 2021 Regular Session; that the coronavirus 2019 (COVID-19) pandemic has required a change in the procedures usually implemented by the General Assembly during previous legislative sessions; that given the required changes to the normal legislative session procedures, the state government needs to retain experienced personnel in order to properly perform necessary legislative functions and ad-

equately respond to issues that may arise during the 2021 Regular Session; and that this act is necessary to ensure that the 2021 Regular Session proceeds with minimal interruption or error. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

**24-4-507. Eligibility for benefits — Credited service.**

(a)(1) The Board of Trustees of the Arkansas Public Employees' Retirement System shall determine, by appropriate rules consistent with the provisions of this chapter, the amount of service to be credited any member for any fiscal year.

(2)(A) For periods of time prior to July 1, 1991, in no case shall less than ten (10) days of service rendered by a member in any calendar month be credited as a month of service, nor shall less than eleven (11) months of service rendered by a member in any fiscal year be credited as a year of service unless the member is employed by the Arkansas School for the Blind or the Arkansas School for the Deaf, the state colleges and universities, or the public schools of the state, in which case nine (9) months would constitute a year of credited service.

(B) For periods of time prior to July 1, 1991, in no case can less than nine (9) months of service rendered in any fiscal year be credited as a full year of service, nor shall more than one (1) year of service be credited any member for all service rendered by him or her in a fiscal year.

(3)(A) Beginning July 1, 1992, and thereafter, service rendered by a member in any calendar month shall be credited as service based upon the member's number of hours of service in that month and in accordance with the following schedule:

- Eighty (80) or more hours of service ..... One (1) month
- Sixty (60) hours up to less than eighty (80) hours ..... Three-fourths (¾) month
- Forty (40) hours up to less than sixty (60) hours ..... One-half (½) month
- Twenty (20) hours up to less than forty (40) hours ..... One-fourth (¼) month



Less than twenty (20) hours ..... No credit.

(B) Beginning July 1, 1991, in no case shall less than eleven (11) months of service rendered by a member in any fiscal year be credited as a full year of service, except that the minimum shall be lowered to nine (9) months for a member whose covered employment is employment with the Arkansas School for the Blind or the Arkansas School for the Deaf, the state colleges and universities, or the public schools.

(C) Any member who retires on or after July 1, 1999, shall receive six (6) months of service credit for each full semester of service rendered in any fiscal year for covered employment with the Arkansas School for the Blind or the Arkansas School for the Deaf, the state colleges and universities, or the public schools of the state.

(4) Prior service credits shall not be granted to any member who did not become a member of the Arkansas Public Employees' Retirement System on the date his or her public employer became a participating public employer, nor shall current service credit be granted any member for any period of time not covered by accumulated contributions standing to his or her credit in the members' deposit account, except as otherwise provided in this chapter.

(b)(1) A member's credited service shall include periods of time, not to exceed a total of five (5) years, during which the member's employment with a public employer was, or is, interrupted due to service rendered by him or her in the United States Armed Forces during a national emergency, but only if:

(A) The person was, or is, an employee of a public employer at the time he or she entered, or enters the United States Armed Forces;

(B) The person was, or is, reemployed by a public employer within six (6) years from and after the termination of the armed service required of him or her; and

(C) The person returns to the members' deposit account the amounts withdrawn by him or her, together with regular interest from the date of withdrawal to the date of repayment.

(2) In any case of doubt as to the period to be so credited any member, the board shall have the final power to determine the period.

(3) During the period of a member's armed service and until his or her return to the employ of a public employer, a member's contributions to the system shall be suspended.

(4) In no case shall the period of armed service be included in computing a member's average compensation.

**History.** Acts 1957, No. 177, § 10; 325, § 7; 2001, No. 151, § 22; 2011, No. 1959, No. 42, § 10; 1965, No. 153, §§ 9, 38, § 6; 2019, No. 315, § 2855.

10; 1969, No. 313, § 3; 1975, No. 907, § 6; **Amendments.** The 2019 amendment deleted "and regulations" following "rules" 1981, No. 859, § 3; A.S.A. 1947, § 12-2510; Acts 1991, No. 757, § 1; 1999, No. in (a)(1).

**24-4-508. Eligibility for benefits — Retirement generally.**

(a) Any member may voluntarily retire upon his or her written application filed with the Board of Trustees of the Arkansas Public Employees' Retirement System setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing of the application, that he or she desires to be retired if that member has:

(1) Twenty-eight (28) or more years of credited service regardless of age;

(2) Attained or attains age sixty (60) and has twenty (20) or more years of actual contributory service commenced prior to January 1, 1978; or

(3) Attained or attains age sixty-five (65) and has five (5) or more years of actual service, except for a member of the General Assembly who must have ten (10) or more years of actual service if he or she only has service as a member of the General Assembly.

(b)(1) Total credited service to qualify for a benefit may be service with the Arkansas Public Employees' Retirement System and service with the University of Arkansas System, which service is covered by the retirement system recognized by the University of Arkansas.

(2) The benefit payable by the Arkansas Public Employees' Retirement System shall be based on credited service in the system and on the final average compensation in the system. However, should a member have less than four (4) years of credited service in the system, "final average compensation" means the monthly average of pays to the member during his or her total years of service in the system.

(c)(1) An annuity determination shall be made promptly by the Arkansas Public Employees' Retirement System upon a member's filing a written application for retirement in accordance with subsection (a) of this section.

(2) The determination shall include the member's total years of credited service, the specific factors used to make the determination, the base annuity payable to the member, and the amount of annuity payments, if any, payable under the annuity options of § 24-4-606.

(3) If the member is not eligible for a retirement annuity, the determination shall state the reasons for the determination.

(d) A member's retirement election is irrevocable except under circumstances as may be permitted by the board by rule.

**History.** Acts 1957, No. 177, § 10; 1959, No. 42, § 10; 1965, No. 153, § 7; 1969, No. 228, § 1; 1985, No. 938, § 2; A.S.A. 1947, § 12-2510; Acts 1993, No. 1093, § 2; 1997, No. 299, § 15; 1999, No. 104, § 2; 1999, No. 627, § 1; 2001, No. 151, § 23; 2007, No. 176, § 5; 2011, No. 38, § 7; 2019, No. 315, § 2856.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (d).



**24-4-511. Eligibility for benefits — Disability retirement — Definitions.**

(a)(1)(A)(i) Except for members of the General Assembly who need at least ten (10) years of actual service, any active member with five (5) or more years of actual service, including actual service for at least eighteen (18) of the twenty-four (24) calendar months immediately preceding his or her disability, who becomes totally and permanently physically or mentally incapacitated for any suitable job or position as an employee as a result of a personal injury or disease may be retired by the Board of Trustees of the Arkansas Public Employees' Retirement System upon written application filed with the board by or on behalf of the member.

(ii)(a) As used in subdivision (a)(1)(A)(i) of this section, "disease" includes without limitation cancer that a firefighter or volunteer firefighter is diagnosed with while he or she is in the line of duty.

(b) A finding that a firefighter or volunteer firefighter was diagnosed with cancer while he or she was in the line of duty may be rebutted by a preponderance of the evidence.

(iii) As used in subdivision (a)(1)(A)(ii) of this section, "cancer" means:

(a) Leukemia, lymphoma, mesothelioma, or multiple myeloma;

(b) Cancer of the brain, urinary tract, liver, skin, breast, cervix, thyroid, prostate, testicle, colon, or digestive tract; or

(c) A cancer that has been found by research and statistics to show higher instances of occurrence in firefighters than in the general population, if the firefighter was exposed to a known carcinogen, as determined by the Department of Health with consideration to the findings of the International Agency for Research on Cancer, while in the official line of duty.

(B) This may occur only if after a medical examination of the member made by or under the direction of a physician or physicians designated by the board, the physician reports to the board in writing that the member is physically or mentally totally incapacitated for any suitable job or position, that the incapacity will probably be permanent, and that the member should be retired.

(2) Upon filing the proper application and meeting the requirements stated in this section, the disability annuity shall be effective the first day of the calendar month following the Arkansas Public Employees' Retirement System's approval of the disability application.

(b)(1) Upon disability retirement as provided in subsection (a) of this section, a member shall receive an annuity provided for in § 24-4-601, and his or her disability retirement and annuity shall be subject to the provisions of subsections (c) and (d) of this section.

(2) When a person retired on disability under this chapter reaches the age required for full age and service retirement benefits, the person's retirement status shall be changed from that of disability to superannuation.

(3)(A)(i) A person who receives or who is receiving a benefit solely because of disability but who meets or has met the elected credited service and total credited service requirement but not the age requirement for a benefit provided for a member with elected service, upon attaining the required age, may have his or her disability retirement status changed to superannuation.

(ii) The person's benefit shall be the age and service amount provided by his or her credited service in effect before termination of employment because of disability.

(B) The change must be made by formal request of the retirant to the board on a form to be furnished by the Arkansas Public Employees' Retirement System and filed with the system setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he or she desires the change to be effective.

(C) In no event shall the change be effective earlier than the first of the month following attainment of the age required for the age and service benefit provided by his or her amount of credited service, and, after the effective date, he or she shall be eligible to return to employment subject to the provisions of § 24-4-520.

(c)(1) At least one (1) time each year during the first five (5) years following a member's retirement on account of disability and at least one (1) time in each three-year period thereafter, the board may require any disability retirant who has not attained the normal retirement age for full age and service retirement benefits to undergo a medical examination to be made by or under the direction of a physician or physicians designated by the board.

(2) If a retirant refuses to submit to a medical examination in any period, his or her disability annuity may be suspended by the board until his or her withdrawal of the refusal.

(3) If the refusal continues for one (1) year, all of the retirant's rights in and to a disability annuity may be revoked by the board.

(4) If, upon the medical examination of the retirant, the physician reports to the board that the retirant is physically and mentally able and capable for a suitable job or position as an employee, his or her disability retirement shall terminate.

(5) If a disability retirant secures employment with an employer not considered a public employer, as defined in § 24-4-101, for the purpose of determining whether he or she is capable of returning to employment, then the disability retirant shall be allowed to earn compensation from the employment for a period of time not to exceed nine (9) months, during which period of time the retirant shall receive no monthly benefits from the system.

(6) If the retirant becomes unable to continue his or her employment before the nine-month period expires, then the retirant's disability retirement benefits from the system shall be reinstated and shall be effective the first day of the month after terminating his or her employment.



(7) Only one (1) trial work period is allowed any disability retirant, but the nine (9) months need not be consecutive.

(8) The trial work period does not prevent the consideration of any medical evidence which may demonstrate recovery before the ninth month of trial work.

(d)(1) If at the end of the nine-month trial work period the retirant wishes to continue his or her employment outside the system, then the retirant's disability retirement status shall terminate. For the purpose of determining his or her eligibility for any other benefit, the retirant shall be considered to have terminated active membership as of the time of disability retirement but for a reason other than disability or death.

(2) If the former disability retirant again becomes an employee of a public employer, as defined in § 24-4-101, the retirant shall immediately again become a member of the system, his or her credited service at the time of his or her disability retirement shall be restored to the retirant's credit, and the amount of his or her accumulated contributions at the time of his or her disability retirement shall be restored to his or her credit in the members' deposit account.

(3) In no event shall the retirant be given service credit for the period he or she was in receipt of the disability annuity.

(4) Should the former disability retirant again become totally and permanently disabled within twenty-four (24) months immediately following his or her return to membership or should the retirant qualify for benefits by reason of age and service, the eighteen (18) months' credited service requirement specified in this section shall be waived.

(e)(1) As used in this section, "suitable job or position" means a job or position, the requirements of which can be physically or mentally performed, as determined by a physician, and for which the remuneration would be substantially gainful.

(2) In case of doubt as to what would be substantially gainful, the board shall have the final power to decide the question.

(3) Any former member who is or was approved for disability by the Social Security Administration but whose onset date does not meet the provision of subdivision (a)(1)(A) of this section that requires credited service for eighteen (18) of the twenty-four (24) months immediately preceding the disability may be retired by the board upon written application to the board subject to the following:

(A) The onset date determined by the Social Security Administration is within twenty-four (24) months of the date of termination from covered employment;

(B) The former member furnishes a written statement to the board from a physician approved by the board that the former member was suffering at the time of termination from an illness or injury that subsequently led to the disability determination; and

(C) Retirement payments authorized under this section shall be effective on the first day of the next month following approval by the board of the written application and shall not be retroactive.

**History.** Acts 1957, No. 177, § 10; 151, § 25; 2013, No. 332, § 9; 2019, No. 1959, No. 42, § 10; 1973, No. 586, § 4; 638, § 1.  
1975, No. 907, § 8; 1977, No. 663, § 3; **Amendments.** The 2019 amendment redesignated (a)(1)(A) as (a)(1)(A)(i), and added (a)(1)(A)(ii) and (a)(1)(A)(iii).  
1981, No. 859, § 4; 1985, No. 448, § 1; A.S.A. 1947, § 12-2510; Acts 1999, No. 325, § 8; 1999, No. 868, § 3; 2001, No.

#### 24-4-517. State service under a federal grant — Definition.

(a) As used in this section, “state service under a federal grant” means service rendered to any state agency while detailed or assigned to the agency under the terms of a federal grant agreement between an agency of the federal government and a state agency to perform services for the state agency and to be under the supervision of state administrators while being paid from federal grant funds awarded to the state agency and withheld from the federal grant moneys.

(b) From and after January 1, 1995, any person who is or was a member of the Arkansas Public Employees’ Retirement System shall be entitled to purchase credited service in the system for a period not to exceed three (3) years for state service under a federal grant, but only if the person:

(1) Has at least ten (10) years of actual service with the system;

(2) Is not receiving or was not eligible to receive any retirement benefits paid by another retirement system for the period of time for which he or she is claiming state service under a federal grant, except for Social Security benefits, if the person had left on deposit the contributions to the other system;

(3)(A) Pays or causes to be paid all employee contributions at the rate and on the compensation that would have been paid had he or she been a member of the system during that time, all employer contributions based on the employer normal cost from the most recently completed regular annual actuarial valuation and the compensation that would have been paid had he or she been a member during that time, and regular interest on the employee and employer contributions computed from the date the service was rendered to the date payment is received by the system.

(B) The member may purchase all of the service or any portion thereof in multiples of one (1) year.

(C) The payment of funds shall be made in one (1) lump sum; and

(4) Has otherwise complied with all other rules as the Board of Trustees of the Arkansas Public Employees’ Retirement System may from time to time adopt under this section.

**History.** Acts 1995, No. 1264, § 1; **Amendments.** The 2019 amendment 1997, No. 239, § 1; 1997, No. 299, § 18; deleted “and regulations” following “rules” 2001, No. 151, § 28; 2019, No. 315, in (b)(4).  
§ 2857.



**24-4-520. Termination required for retirement — Definitions.**

(a) Except as provided in subsection (c) of this section, a member of the Arkansas Public Employees' Retirement System shall terminate covered employment to be eligible for retirement.

(b)(1) A member shall not be terminated from employment for retirement purposes if the person:

(A)(i) Returns to employment in a position covered under the system within one hundred eighty (180) days of the person's effective date of retirement.

(ii) Subdivision (b)(1)(A)(i) of this section does not apply to a member of the system who returns to temporary employment with the House of Representatives, the Senate, the Bureau of Legislative Research, Arkansas Legislative Audit, or the Arkansas Code Revision Commission during a regular session, fiscal session, or special session in a session-only position requiring specialized institutional knowledge and experience; or

(B) Is a member with service credit under § 24-4-521 at a rate of two (2) or more years of credited service for each year of actual service and the person returns to employment in a position covered under the system within one (1) year of the person's effective date of retirement.

(2) A member participating in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan on January 1, 2009, shall have the one-hundred-eighty-day separation requirement waived and may return to employment otherwise covered by the system no sooner than thirty (30) calendar days from the commencement of his or her retirement.

(3) A member who has retired and commenced receiving benefits in any month between January 2009 and June 2009, inclusive, shall have the one-hundred-eighty-day separation requirement waived and may return to employment otherwise covered by the system no sooner than thirty (30) calendar days from the commencement of his or her retirement.

(c)(1) An elected public official may retire and begin receiving retirement benefits if the elected public official is a member:

(A) Whose current service in public office in one (1) form of government is covered by § 24-4-521(b)(5); and

(B) Who is elected to public office in a different form of government and will begin serving in that public office immediately after the expiration of his or her term of public office described in subdivision (c)(1)(A) of this section.

(2) The member shall notify the retirement system of his or her impending service in another form of government at least thirty (30) days prior to the first day of the month in which that service will begin. A completed retirement application shall be submitted at that time.

(3) As used in this subsection, "form of government" means city government, county government, or state government.

(d) Persons failing to meet termination requirements shall forfeit their benefits until requirements are met.

(e)(1) As used in this section, “terminate” means:

(A) The member’s employment has ended;

(B) A complete severance of the employer-employee relationship has occurred; and

(C) The member has ceased performing any services for the employer, except for noncompensated functions related to the transfer of the duties or the transfer of the position itself.

(2) If the member is an elected public official, “terminate” as used in this section means:

(A) The member has resigned, been removed, or otherwise no longer holds the elected position;

(B) A complete severance from the elected position has occurred; and

(C) The member has ceased performing any services in his or her elected position, except for noncompensated functions related to the transfer of the duties or the transfer of the position itself.

(3) As used in this section, “terminate” does not mean:

(A) Taking a leave of absence;

(B) Performing job duties or services without remuneration; or

(C) Receiving or accruing additional employment-related compensation, reimbursements, benefits, or other emoluments.

**History.** Acts 1999, No. 1460, § 1; **Amendments.** The 2021 amendment 2001, No. 154, § 1; 2005, No. 652, § 1; added (b)(1)(A)(ii) and made stylistic 2009, No. 657, § 1; 2011, No. 40, § 1; changes. 2011, No. 774, § 1; 2021, No. 20, § 1.

#### **24-4-521. Credited service generally — Definition.**

(a) The Board of Trustees of the Arkansas Public Employees’ Retirement System shall establish the amounts of service to be credited its members subject to the provisions of subsection (b) of this section.

(b)(1)(A)(i) Noncontributory employment service by a person who was:

(a) Employed prior to July 1, 1997, as a public safety member shall be credited at one and one-half (1½) times the regular rate for crediting service; and

(b) Employed on and after July 1, 1997, shall be credited at the regular rate for crediting service.

(ii) A person receiving credit for service under subdivision (b)(1)(A)(i)(a) or subdivision (b)(1)(A)(i)(b) of this section shall be required to have five (5) years of actual service to meet the:

(a) Retirement eligibility requirements under §§ 24-4-510 — 24-4-512 and 24-4-601; and

(b) Eligibility requirements for payment upon death benefits under § 24-4-608.

(B)(i) Noncontributory or contributory employment service by a person who qualifies as a public safety member under § 24-4-1004 shall be credited at one and one-half (1½) times the regular rate for crediting service.



(ii) A person receiving credit for service under subdivision (b)(1)(B)(i) of this section shall be required to have five (5) years of actual service to meet the:

(a) Retirement eligibility requirements under §§ 24-4-510 — 24-4-512 and 24-4-601; and

(b) Eligibility requirements of § 24-4-608.

(2)(A)(i) Noncontributory employment as the Governor by a person first elected to a public office covered by the Arkansas Public Employees' Retirement System prior to July 1, 1999, shall be credited as service at three (3) times the regular rate for credited service.

(ii) Noncontributory or contributory employment as the Governor by a person first elected to a public office covered by the system on or after July 1, 1999, shall be credited at the regular rate for crediting service.

(B) A person receiving credit for service under subdivision (b)(2)(A)(i) or subdivision (b)(2)(A)(ii) of this section shall be required to have:

(i) Four (4) years of actual service to meet the retirement eligibility requirements under §§ 24-4-510 — 24-4-512 and 24-4-601; and

(ii) Five (5) years of actual service to meet the eligibility requirements for payment upon death benefits under § 24-4-608.

(3)(A)(i) Noncontributory employment as an elected state constitutional officer by a person first elected to a public office covered by the system prior to July 1, 1999, shall be credited at two and one-half (2½) times the regular rate for crediting service.

(ii) Noncontributory or contributory employment as an elected state constitutional officer by a person first elected to a public office covered by the system on or after July 1, 1999, shall be credited at the regular rate for crediting service.

(B) A person receiving credit for service under subdivision (b)(3)(A)(i) or subdivision (b)(3)(A)(ii) of this section shall be required to have five (5) years of actual service to meet the:

(i) Retirement eligibility requirements under §§ 24-4-510 — 24-4-512 and 24-4-601; and

(ii) Eligibility requirements for payment of death benefits under § 24-4-608.

(4)(A)(i) Noncontributory or contributory employment as a member of the General Assembly shall be credited at the regular rate for crediting service.

(ii) A person receiving credit for service under subdivision (b)(4)(A)(i) of this section shall be required to have:

(a) Ten (10) years of credited service to meet the retirement eligibility requirements of §§ 24-4-510, 24-4-511, and 24-4-609;

(b) Five (5) years of actual service to meet the eligibility requirements for the payment upon death benefits under § 24-4-608; and

(c) Five (5) years of actual service to be eligible to purchase military service credit under § 24-2-502.

(B) A member of the General Assembly who at any time has served at least six (6) months in the General Assembly shall be credited with no more than one (1) year's actual service.

(5)(A) A person who is employed as an elected public official covered by the system and:

(i) Who has served in a noncontributory elected position covered by the system before July 1, 2011, shall be credited as service at two (2) times the regular rate for crediting service;

(ii) Who has never served in a noncontributory elected position covered by the system before July 1, 2011, shall be credited as service at two (2) times the regular rate for crediting service, and the employee shall contribute an additional two and one-half percent (2.5%) of the gross payroll, and the employer shall contribute an additional two and one-half percent (2.5%) of the gross payroll for the additional service that exceeds the regular rate of service; or

(iii) Who has never served in a contributory elected position covered by the system before January 1, 2014, shall be credited as service at two (2) times the regular rate for crediting service, and the employee shall contribute an additional two and one-half percent (2.5%) of the gross payroll, and the employer shall contribute an additional two and one-half percent (2.5%) of the gross payroll for the additional service that exceeds the regular rate of service.

(B) However, at least five (5) years of actual service shall be required to meet:

(i) The retirement eligibility requirements of §§ 24-4-510 — 24-4-512 and 24-4-601; and

(ii) The eligibility requirements of § 24-4-608.

(C) This subdivision (b)(5) does not apply to:

(i) The Governor;

(ii) An elected state constitutional officer;

(iii) A member of the General Assembly; or

(iv) An elected public official under the State Division of the Arkansas Public Employees' Retirement System.

(6)(A)(i) Noncontributory employment as an elected public official under the state division of the system other than the Governor, an elected state constitutional officer, or a member of the General Assembly by a person first elected to a public office covered by the Arkansas Public Employees' Retirement System prior to July 1, 1999, shall be credited as service at two (2) times the regular rate for crediting service.

(ii) A person receiving credit for service under subdivision (b)(6)(A)(i) of this section shall have five (5) years of actual service to meet the:

(a) Retirement eligibility requirements under §§ 24-4-510 — 24-4-512 and 24-4-601; and

(b) Eligibility requirements for payment upon death benefits under § 24-4-608.

(B) Noncontributory or contributory employment as an elected public official under the state division of the system other than the



Governor, an elected state constitutional officer, or a member of the General Assembly by a person first elected to a public office covered by the system on or after July 1, 1999, shall be credited at the regular rate for crediting service.

(c) As used in this section, "elected state constitutional officer" means the Lieutenant Governor, Attorney General, Secretary of State, Auditor of State, Treasurer of State, and Commissioner of State Lands.

**History.** Acts 2001, No. 151, § 30; 2011, No. 563, § 1; 2011, No. 978, § 3; 2013, No. 288, § 1; 2019, No. 826, § 1. **Amendments.** The 2019 amendment substituted "credited" for "actual" in (b)(4)(A)(ii)(a); and added (b)(4)(A)(ii)(c).

#### **24-4-522. Applicability of benefit provisions.**

(a) The benefit provisions of this chapter shall be applicable to specified members of the Arkansas Public Employees' Retirement System.

(b)(1) The noncontributory benefit provisions of this chapter shall be applicable to each person who has never been a member of the Arkansas Public Employees' Retirement System before January 1, 1978, and who is employed on or after January 1, 1978, in a position covered by the system and who thereby becomes a member.

(2) In addition, each other member who was actively employed in a position covered by the Arkansas Public Employees' Retirement System on June 30, 1991, may elect to become covered by the noncontributory benefit provisions of this chapter by application written to, and received by, the governing body of the plan before January 1, 1985.

(3)(A)(i) Each other member who was not actively employed in a position covered by the Arkansas Public Employees' Retirement System on January 1, 1978, shall become covered by the noncontributory benefit provisions of this chapter at the time the member first becomes so employed after January 1, 1978, unless he or she elects to become covered by the provisions of the Arkansas Public Employees' Retirement System which require member contributions, by election written to, and received by, the governing body of the system before the later of January 1, 1986, and six (6) months after the member first becomes so employed after January 1, 1978.

(ii) However, if the member so elects benefits requiring member contributions, he or she shall pay the member contributions from the date of the employment, together with regular interest, from the dates the contributions would normally have been received by the Arkansas Public Employees' Retirement System to the dates of actual payment.

(B)(i) The benefits of each member's becoming covered by the noncontributory benefit provisions of this chapter shall be computed by applying the benefit provisions prescribed by this chapter for all credited service of the person rendered before and after January 1, 1978.

(ii) However, benefit amounts based upon employment before January 1, 1978, shall not be less than benefit amounts computed in

accordance with the Arkansas Public Employees' Retirement System benefit provisions at the time of retirement which require member contributions.

(c)(1) The noncontributory benefit provisions of this chapter, including death and disability benefits, shall apply to all credited service rendered before or after the date of election of employees of the Department of Human Services in either the Arkansas Teacher Retirement System or the Arkansas Public Employees' Retirement System.

(2)(A) Employees of the Department of Human Services and employees of Arkansas Rehabilitation Services shall be entitled to the benefit amount computed by applying the benefit provisions prescribed by this chapter for all credited service rendered before and after January 1, 1978, except that benefit amounts based upon employment before January 1, 1978, shall not be less than benefit amounts computed in accordance with benefit provisions in effect December 31, 1977.

(B) On and after January 1, 1993, employees of Arkansas Rehabilitation Services who elected to be covered by the provisions of this subsection and who are still active employees on January 1, 1993, shall be entitled to the benefit amount computed by applying the benefit provisions prescribed by this chapter for all credited service rendered before and after January 1, 1978, except that benefit amounts based upon employment before January 1, 1978, shall be computed in accordance with current benefit provisions in effect for the Arkansas Teacher Retirement System at the time of their retirement.

(3) In computing the benefit under the benefit provisions of this chapter, the final average compensation shall be computed upon all service before and after the election of the Arkansas Rehabilitation Services employee as provided in § 24-4-101(33) and § 24-4-746.

(d) Each public retirement system in which the employee has served shall be responsible financially for the benefit amounts payable to the retirant, the retirant's survivors, and the retirant's beneficiaries based upon the ratio of the number of years the employee was a member of that public retirement system to the total number of years the employee was a member of any of the two (2) statewide retirement systems, i.e., the Arkansas Public Employees' Retirement System or the Arkansas Teacher Retirement System.

(e)(1)(A) The benefit provisions of this chapter shall be administered by the Arkansas Public Employees' Retirement System for the benefit of all employees making the option.

(B) The Arkansas Public Employees' Retirement System shall certify monthly the amount of benefits paid hereunder, and the Arkansas Teacher Retirement System shall immediately transfer that amount from its benefit account to the proper account designated by the Arkansas Public Employees' Retirement System.

(2) If an employee of the Department of Human Services who becomes or has become a member of the Arkansas Public Employees'



Retirement System under the provisions of this section leaves employment with the Department of Human Services and becomes employed in another position covered by the Arkansas Teacher Retirement System, the person's credited service, both before and after his or her service under this chapter, shall be subject to the benefit provisions of §§ 24-7-701, 24-7-702, 24-7-704 — 24-7-713, 24-7-715, and 24-7-716 [repealed].

(3) The member shall be eligible to establish reciprocity under the provisions of §§ 24-2-401 — 24-2-405 and 24-2-407.

(4) Members of the Arkansas Teacher Retirement System who have not elected to pay contributions to that system on full salary shall not be eligible to elect to become covered by the benefit provisions of this chapter unless they first make written application with the Arkansas Teacher Retirement System for full salary coverage for all salaries received from July 1, 1969, until the date of making the election to come under the provisions of this chapter and paying to the system the amount of the additional contributions, plus regular interest, for full salary credited service.

(f) Any member of the Arkansas Public Employees' Retirement System employed prior to January 1, 1978, who does not elect in writing to become covered by the noncontributory benefit provisions of this chapter shall not be covered by the noncontributory benefit provisions of this chapter but shall remain in the plan he or she was in January 1, 1978, and shall continue to make regular contributions as provided in the Arkansas Public Employees' Retirement System.

(g) Any member of the Arkansas Public Employees' Retirement System who elects in writing to become covered by the noncontributory benefit provisions of this chapter shall be entitled to a refund of any accumulated contributions paid on or after January 1, 1978, and prior to the date of election.

**History.** Acts 2001, No. 151, § 30; Acts 2019, No. 910, § 2367.

**Amendments.** The 2019 amendment substituted "Division of Workforce Services" for "Department of Career Education" following "Arkansas Rehabilitation Services of the" in (c)(2)(A) and (B).

## SUBCHAPTER 6 — BENEFITS

### SECTION.

24-4-603. Refund of contributions.

24-4-606. Annuity options.

24-4-607. Redetermination of benefits.

24-4-608. Payment of benefits upon death of member before retirement — Exception.

### SECTION.

24-4-615. Maximum benefit limitation.

24-4-620. Partial annuity withdrawal provision.

24-4-623. Final average compensation.

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**Effective Dates.** Acts 2019, No. 625, § 4, provided: "Retroactivity. This act applies retroactively to January 1, 2017."

**24-4-602. Payment of annuity balance upon death of retirant or member.****CASE NOTES****Applicability.**

There was no error in the decision that this section did not apply as it applied only to those who choose a straight-life

annuity, but the mother had chosen an alternative. *Harrison v. Ark. Pub. Employees' Ret. Sys.*, 2019 Ark. App. 179, 574 S.W.3d 705 (2019).

**24-4-603. Refund of contributions.**

(a) In the event a former member has left the employ of a participating public employer and requests a refund of his or her accumulated contributions, he or she shall be paid the contributions upon his or her written application for a refund on a form to be supplied by the Arkansas Public Employees' Retirement System.

(b) The former member may receive interest on the contributions if he or she has had accumulated contributions standing to his or her credit in the members' deposit account for at least five (5) years between the date he or she became a member of the system and the date he or she requests the refund of contributions.

(c) The interest shall be paid at a rate and method to be determined by the Board of Trustees of the Arkansas Public Employees' Retirement System and shall be calculated on the balance in the members' deposit account on the last June 30 prior to the date he or she obtains his or her refund.

(d) If a former member has applied for a refund of contributions but returns to employment with a participating public employer prior to the date he or she receives his or her refunded contributions, his or her request shall be void and he or she must again terminate his or her employment to request a refund of contributions.

(e) Refunds of a member's contributions or accumulated contributions, as the case may be, may be made in equal installments according to such rules as the board may adopt from time to time.

**History.** Acts 1957, No. 177, § 11; 1959, No. 42, § 11; 1975, No. 907, § 1; A.S.A. 1947, § 12-2511; Acts 2019, No. 315, § 2858.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (e).

**24-4-606. Annuity options.**

(a) Before the date the first payment of a member's annuity becomes due, but not thereafter, a member may elect to receive his or her annuity as a straight life annuity or may elect to have his or her annuity reduced and nominate a beneficiary in accordance with the provisions of one (1) of the following options:

(1) Option A60 — 60 Months Certain and Life Annuity.

(A) Under Option A60, the retirant shall be paid a reduced annuity for life with the provision that if the retirant's death occurs before



sixty (60) monthly payments have been made, the full reduced annuity shall continue to be paid for the remainder of the sixty (60) months to such persons and in such shares as the retirant shall have designated in writing and filed with the plan. If there is no payee surviving, the lump-sum actuarial equivalent of the remaining monthly payments shall be paid to the estate of the last survivor among the retirant and the designated persons.

(B) The reduced annuity shall be ninety-eight percent (98%) of the straight life annuity;

(2) Option A120 — 120 Months Certain and Life Annuity.

(A) Under Option A120, the retirant shall be paid a reduced annuity for life with the provision that if the retirant's death occurs before one hundred twenty (120) monthly payments have been made, the full reduced annuity shall continue to be paid for the remainder of the one hundred twenty (120) months to such persons and in such shares as the retirant shall have designated in writing and filed with the plan. If there is no payee surviving, the lump sum actuarial equivalent of the remaining monthly payments shall be paid to the estate of the last survivor among the retirant and the designated persons.

(B) The reduced annuity shall be ninety-four percent (94%) of the straight life annuity;

(3) Option B50 — 50 Percent Survivor Beneficiary Annuity.

(A)(i) Under Option B50, the retirant shall be paid a reduced annuity for life with the provision that upon the retirant's death one-half ( $\frac{1}{2}$ ) of the reduced annuity shall be continued throughout the future lifetime of and paid to such person as the retirant shall have designated in writing and filed with the plan before his or her annuity's starting date.

(ii) However, the person must be either his or her spouse for not less than six (6) months immediately preceding the first payment due date or another person aged forty (40) or older receiving more than one-half ( $\frac{1}{2}$ ) support from the retirant for not less than one (1) year immediately preceding the first payment due date.

(B) The reduced annuity to the retirant shall be eighty-eight percent (88%) if the retirant's age and his or her beneficiary's age are the same on the first payment due date, which shall be decreased by one-half of one percent (0.5%), for each year that the beneficiary's age is less than the retirant's age, or which shall be increased by one-half of one percent (0.5%), up to a maximum of ninety-five percent (95%), for each year that the beneficiary's age is more than the retirant's age.

(C) However, if the named beneficiary under Option B50 predeceases the retirant, the original unreduced benefit shall be paid to the retirant prospectively; or

(4) Option B75 — 75 Percent Survivor Beneficiary Annuity.

(A)(i) Under Option B75, the retirant shall be paid a reduced annuity for life with the provision that, upon his or her death,

three-fourths ( $\frac{3}{4}$ ) of the reduced annuity shall be continued throughout the future lifetime of, and paid to, such person as the retirant shall have designated in writing and filed with the plan before his or her annuity's starting date.

(ii) However, the person must be either the retirant's spouse for not less than six (6) months immediately preceding the first payment due date or another person aged forty (40) or older receiving more than one-half ( $\frac{1}{2}$ ) support from the retirant for not less than one (1) year immediately preceding the first payment due date.

(B) The reduced annuity to the retirant shall be eighty-three percent (83%) if the retirant's age and his or her beneficiary's age are the same on the first due date, which shall be decreased by seven-tenths of one percent (0.7%) for each year that the beneficiary's age is less than the retirant's age or which shall be increased by seven-tenths of one percent (0.7%) up to a maximum of ninety percent (90%) for each year that the beneficiary's age is more than the retirant's age.

(C) However, if the named beneficiary under Option B75 predeceases the retirant, the original unreduced benefit shall be paid to the retirant prospectively.

(b)(1) A death of a spouse or divorce or other marriage dissolution or the death of a person forty (40) years of age or older who is the designated beneficiary under Option B50 or Option B75 shall cancel, at the written election of the retirant, Option B50 or Option B75 at retirement, providing continuing lifetime benefits to the designated person, and shall return the retirant to his or her straight life, Option A60, or Option A120 annuity, to be effective the month following receipt of his or her election by the Arkansas Public Employees' Retirement System.

(2)(A) A retirant who is receiving a straight life, Option A60, or Option A120 annuity and who marries after retirement or within the one (1) year immediately preceding retirement may elect to cancel his or her straight life, Option A60, or Option A120 annuity and may elect Option B50 or Option B75, providing continuing lifetime benefits to his or her spouse, but only if the election is on a form approved by the system and is received by the system not earlier than one (1) year after the date of the marriage and not later than eighteen (18) months after that date.

(B) The election shall be effective the first day of the month following the receipt of the notice.

(c) If a member fails to elect an option, his or her annuity shall be paid to him or her as a straight life annuity.

(d)(1) The surviving spouse of a system member who retired prior to July 1, 1967, shall receive a monthly survivor's annuity equal to seventy-five percent (75%) of the retirant's monthly benefit at the time of death, provided that the surviving spouse was married to the retirant on the date of retirement, the surviving spouse is unmarried, and the surviving spouse makes application to the system on or before June 30, 1995.



(2) The monthly survivor's annuity shall be effective the first day of the month following the month of application, and no annuity will be paid the surviving spouse for any period prior to the first of the month following the month of application.

(e) The surviving spouse of a member of the system who retired on or after February 1, 1991, and who elected a straight life annuity shall be entitled to receive a survivor's annuity equal to the amount that would have been received had the member elected Option B75, provided:

(1) The member dies within twelve (12) months of the effective date of retirement; and

(2) The surviving spouse makes application to the system within twelve (12) months of the date of the member's death.

**History.** Acts 1957, No. 177, § 11; 1967, No. 108, § 4; 1979, No. 715, § 2; A.S.A. 1947, § 12-2511; Acts 1993, No. 973, § 1; 1993, No. 1200, § 2; 2001, No. 151, § 32; 2001, No. 438, §§ 1, 2; 2005, No. 383, § 1; 2019, No. 625, §§ 1, 2.

added the (a)(3)(A)(i), (a)(3)(A)(ii), (a)(4)(A)(i), and (a)(4)(A)(ii) designations; and substituted "six (6) months" for "one (1) year" in (a)(3)(A)(ii) and (a)(4)(A)(ii).

**Effective Dates.** Acts 2019, No. 625, § 4, provided: "Retroactivity. This act applies retroactively to January 1, 2017."

**Amendments.** The 2019 amendment

## 24-4-607. Redetermination of benefits.

(a) Each July 1 the Arkansas Public Employees' Retirement System shall redetermine the amount of each monthly benefit which has been payable by the system for at least twelve (12) full calendar months. The redetermined amount shall be payable for the following twelve (12) calendar months.

(b) The redetermined amount shall be the amount of the benefit payable as of the immediately preceding July 1 increased by three percent (3%).

(c)(1) If a person is first hired by a system-covered employer on or after July 1, 2022, and retires under the eligibility requirements of the system, the monthly benefit for the person shall be redetermined in accordance with subdivision (c)(2) of this section.

(2)(A) The redetermined amount for a person described in subdivision (c)(1) of this section shall be the amount of the monthly benefit otherwise payable as of the immediately preceding July 1 increased by the lesser of three percent (3%) or the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor over the one-year period ending in the December immediately preceding the date for which the redetermined amount is being calculated.

(B) The redetermined amount of the monthly benefit to be paid to the person shall not be less than the redetermined amount of the monthly benefit paid to the person in the preceding year.

**History.** Acts 1973, No. 666, § 5; 1979, No. 715, § 1; A.S.A. 1947, § 12-2511.6; Acts 1987, No. 477, § 1; 1991, No. 432, § 2; 1997, No. 299, § 19; 1999, No. 39, § 2; 2021, No. 366, § 1.

**Amendments.** The 2021 amendment added (c).

#### **24-4-608. Payment of benefits upon death of member before retirement — Exception.**

(a) Effective July 1, 2001, if an active member or former member with five (5) or more years of actual service dies before retirement, the applicable benefits provided in this section shall be paid upon written application to the Board of Trustees of the Arkansas Public Employees' Retirement System.

(b) For purposes of computing benefits provided by this section, the deceased member's or former member's compensation at the time of death shall be the member's compensation for the year immediately preceding the cessation of his or her pay.

(c)(1) A member's or former member's surviving spouse who was married to the member at least six (6) months immediately preceding his or her death shall receive an annuity computed in the same manner in all respects as if the member or former member had:

(A) Retired the date of his or her death with entitlement to an annuity provided for in § 24-4-601;

(B) Elected the Option B75 survivor annuity provided for in § 24-4-606(a)(4); and

(C) Nominated his or her spouse as joint beneficiary.

(2)(A) If the member or former member had satisfied the age and service requirements provided for in § 24-4-101 or had acquired twenty (20) years of actual service, the spouse annuity shall commence immediately and be payable for life. If the member or former member had not satisfied the age and service requirement provided for in § 24-4-101 or had not acquired twenty (20) years of actual service, then the spouse annuity shall commence immediately and be payable until the earlier of his or her remarriage or death.

(B) A surviving spouse who is otherwise eligible but whose benefit has been deferred because the spouse did not meet the age requirements in effect before July 1, 1999, shall be eligible to commence a spouse annuity effective July 1, 1999. The spouse annuity shall not be retroactive.

(3) The spouse annuity shall not be less than ten percent (10%) of the deceased member's or former member's covered compensation at the time of death.

(4) In any event, as long as the surviving spouse has in his or her care any of the deceased member's or former member's dependent children receiving a benefit provided for in this section, there shall be payable to him or her a spouse annuity as indicated in this section which shall not be less than ten percent (10%) of the deceased member's or former member's compensation at the time of death.



(d)(1)(A) A member's or former member's dependent child or dependent children shall each receive an annuity of the greater of either ten percent (10%) of the member's or former member's covered compensation at the time of death or an equal share of one hundred fifty dollars (\$150) monthly.

(B) Where there are three (3) or more dependent children, each dependent child shall receive an annuity of an equal share of the greater of either twenty-five percent (25%) of the covered compensation or one hundred fifty dollars (\$150) monthly.

(2)(A) A child shall be a dependent child until the child's death, marriage, or attainment of age eighteen (18), whichever occurs first.

(B)(i) However, the age-eighteen maximum shall be extended as long as the child continues uninterruptedly being a full-time student at an accredited secondary school, college, or university, but in no event beyond his or her attainment of age twenty-three (23).

(ii) In addition, the age-eighteen maximum shall be extended for any child who has been deemed physically or mentally incompetent by an Arkansas court of competent jurisdiction or by the board, for as long as the incompetency exists.

(3) Upon a child's ceasing to be a dependent child, his or her annuity shall terminate, and there shall be a redetermination of the amounts payable to any remaining dependent children.

(e) If at the time of the member's or former member's death there is neither a spouse nor a dependent child, each dependent parent shall receive an allowance of the greater of ten percent (10%) of the covered compensation or an equal share of one hundred fifty dollars (\$150) monthly, but only if the board finds that the parent was dependent for at least fifty percent (50%) of his or her financial support upon the member or former member.

(f)(1) If no annuity can become payable to a dependent child due to the death of the member or former member and a surviving spouse or dependent parents are the only persons who will be eligible for monthly benefits and the spouse or dependent parents are also the designated beneficiaries of the member or former member, then, in that event, the surviving spouse or dependent parents may elect to receive a refund of the member's or former member's accumulated contributions as provided in § 24-4-602(d) in lieu of any benefits which could become payable under this act.

(2) The option to choose a refund of the member's or former member's contributions shall also be afforded to any spouse or dependent parent qualified under this section whose eligibility for the benefit occurred before the passage of this act and who could not exercise the option.

(3) Once the refund of the deceased member's or former member's accumulated contributions has been made to the surviving spouse or dependent parents under this section, the person shall have no future claim to monthly retirement benefits due to the death of the member or former member.

(g)(1) In the event that all the annuities provided for in this section payable on account of the death of a member or former member

terminate before there has been paid an aggregate amount equal to his or her accumulated contributions standing to his or her credit in the members' deposit account at the time of his or her death, the difference between the accumulated contributions and the aggregate amount of annuity payments shall be paid to such person as he or she shall have nominated by written designation duly executed and filed with the board.

(2) If there is no designated person surviving at termination, the difference shall be paid to the member's or former member's estate.

(h) Annuities payable under the provisions of this section shall be effective the first day of the calendar month next following the date of the member's or former member's death or the first day of the month following the month in which the survivor becomes eligible for benefits as provided by law.

(i) The provisions of this section shall not be applicable in determining survivor benefits under the General Assembly Division or the State Constitutional Officers' Division of the Arkansas Public Employees' Retirement System if a benefit is provided to the surviving spouse by other laws applicable to the Arkansas Public Employees' Retirement System.

(j) The benefits provided in this section for former members shall not apply to former members who terminated covered employment prior to July 1, 1997, with less than ten (10) years of service or whose death occurred before July 1, 2001.

**History.** Acts 1975, No. 907, §§ 15, 18; 1977, No. 663, § 4; 1979, No. 715, § 4; 1981, No. 859, § 10; 1983, No. 637, § 1; 1985, No. 938, § 11; A.S.A. 1947, §§ 12-2511.12, 12-2511.15; Acts 1993, No. 432, §§ 9, 10; 1997, No. 299, § 20; 1999, No. 325, § 9; 1999, No. 1450, § 2; 2001, No. 151, § 33; 2001, No. 356, § 1; 2019, No. 625, § 3.

**Amendments.** The 2019 amendment substituted "six (6) months" for "the one (1) year" in the introductory language of (c)(1).

**Effective Dates.** Acts 2019, No. 625, § 4, provided: "Retroactivity. This act applies retroactively to January 1, 2017."

## CASE NOTES

### Applicability.

Arkansas Public Employees' Retirement System properly relied on this section to deny a daughter her mother's annuity payments as the statute clearly stated that when an employee died before retirement had begun, and there was a

surviving spouse, then it was as though the employee had chosen Option B75. This section did not require that the employee chose Option B75. *Harrison v. Ark. Pub. Employees' Ret. Sys.*, 2019 Ark. App. 179, 574 S.W.3d 705 (2019).

### 24-4-615. Maximum benefit limitation.

(a) Notwithstanding any other provision of this chapter, benefits paid under the provisions of this chapter shall not exceed the limitations of the Internal Revenue Code, 26 U.S.C. § 415 that are applicable to governmental retirement plans.



(b)(1) The Board of Trustees of the Arkansas Public Employees' Retirement System is hereby empowered and authorized to promulgate all necessary rules to implement the limitations of the Internal Revenue Code, 26 U.S.C. § 415.

(2) The rules adopted by the board pursuant to this section shall be amended to reflect any changes in the content or application of the Internal Revenue Code, 26 U.S.C. § 415 enacted by the United States Congress or promulgated by the Internal Revenue Service.

**History.** Acts 1995, No. 738, § 1; 2019, No. 315, § 2859. deleted "and regulations" following "rules" in (b)(1) and (b)(2).

**Amendments.** The 2019 amendment

### **24-4-620. Partial annuity withdrawal provision.**

(a) Any member who does not terminate employment and retire on the date that member meets the age and service requirements of § 24-4-508 for an unreduced annuity and has not elected to participate in the Deferred Retirement Option Plan as provided in § 24-4-801 et seq. may elect at the time of retirement to participate in the Arkansas Public Employees' Retirement Partial Annuity Withdrawal Program.

(b) A member electing to participate shall be eligible to receive, at the time of retirement, a lump-sum distribution in an amount not exceeding one (1) month of benefit for each completed month of service beyond eligibility for an unreduced benefit. The lump sum shall not exceed an amount equal to sixty (60) months of benefits.

(c) A member electing to participate shall have his or her lifetime annuity reduced by an actuarially determined equivalent in accordance with rules adopted by the Board of Trustees of the Arkansas Public Employees' Retirement System.

**History.** Acts 2001, No. 357, § 1; 2019, No. 315, § 2860. deleted "and regulations" following "rules" in (c).

**Amendments.** The 2019 amendment

### **24-4-623. Final average compensation.**

(a)(1) For a member first hired by a system-covered employer on July 1, 2022, or after, the average of the five (5) highest annual compensations paid to the member during a completed fiscal year of credited service with a public employer shall determine the final average compensation that shall be used to determine the member's monthly retirement benefit.

(2) The five-year average shall be the greatest of the following:

(A) One-fifth ( $\frac{1}{5}$ ) of the following: The total of the highest compensations paid during the four (4) completed fiscal years when added to the total fifth-highest compensation paid during the completed fiscal year; or

(B) One-fifth ( $\frac{1}{5}$ ) of the following: The total of the highest compensations paid during the four (4) completed fiscal years added to the

total of the compensation paid for the months of credited service within the incomplete fiscal year in which the member retires, provided there are some, and the total fifth-highest compensation paid during the completed fiscal year which has been multiplied by the number of months remaining in the fiscal year in which retirement occurs and divided by twelve (12).

(3) Should the member have less than the minimum five (5) years of credited service, "average compensation" means the annual average compensations to the member during his or her total years of actual service.

(b)(1) For a member first hired by a system-covered employer before July 1, 2022, the average of the three (3) highest annual compensations paid during a completed fiscal year of credited service with a public employer determines the final average compensation to be used in determining a member's monthly retirement benefit.

(2) The three-year average shall be the greatest of the following:

(A) One-third ( $\frac{1}{3}$ ) of the following: The total of the highest compensations paid during the two (2) completed fiscal years when added to the total third-highest compensation paid during the completed fiscal year; or

(B) One-third ( $\frac{1}{3}$ ) of the following: The total of the highest compensations paid during the two (2) completed fiscal years added to the total of the compensation paid for the months of credited service within the incomplete fiscal year in which the member retires, provided there are some, and the total third-highest compensation paid during the completed fiscal year which has been multiplied by the number of months remaining in the fiscal year in which retirement occurs and divided by twelve (12).

(3) Should the member have less than the minimum three (3) years of credited service, "average compensation" means the annual average compensations to the member during his or her total years of actual service.

(c)(1) If a member's rate of pay is set by Arkansas Constitution, Amendment 70, § 1, then the member's average compensation shall not be less than the member's:

(A) Rate of pay at the time of separation from covered employment; and

(B) Highest rate of such pay.

(2) If a member served at any time in an office whose rate of pay is set by Arkansas Constitution, Amendment 70, § 1, and that member was a member of the General Assembly on December 31, 1978, then the member's average compensation shall not be less than the rate of pay currently set for the highest legislative office the member held.



## SUBCHAPTER 7 — PROVISIONS APPLICABLE TO PARTICULAR EMPLOYEES

### SECTION.

24-4-704 — 24-4-707. [Repealed.]

24-4-710. [Repealed.]

24-4-712. [Repealed.]

24-4-714. [Repealed.]

24-4-726. [Repealed.]

### SECTION.

24-4-727. War Memorial Stadium Commission employees.

24-4-741. [Repealed.]

24-4-746. Authority to promulgate rules.

24-4-748. Dual full-time employment.

**Effective Dates.** Acts 2017, No. 269, § 13; Feb. 22, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Department of Parks and Tourism is well-positioned to oversee and promote War Memorial Stadium; that the transfer of War Memorial Stadium to the Department of Parks and Tourism promotes efficiency; and that this act is immediately necessary in order to ensure a timely transition to minimize any adverse impact on upcoming events to be held at War Memorial Stadium. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

## 24-4-704 — 24-4-707. [Repealed.]

**Publisher's Notes.** These sections, concerning service credit of members of the General Assembly between 1957 and 1967, were repealed by Acts 2019, No. 448, §§ 3-6, effective March 13, 2019. The sections were derived from the following sources:

24-4-704. Acts 1975, No. 313, § 2; A.S.A. 1947, § 12-2510.10; Acts 2001, No. 151, § 34.

24-4-705. Acts 1971, No. 103, § 4; 1971, No. 305, § 1; 1973, No. 396, § 1; 1973, No.

665, § 1; A.S.A. 1947, § 12-2510.6; Acts 2001, No. 151, § 35.

24-4-706. Acts 1971, No. 103, § 5; 1971, No. 305, § 2; 1973, No. 254, § 1; 1973, No. 666, § 1; 1975, No. 907, § 9; 1979, No. 715, § 5; 1981, No. 859, § 7; A.S.A. 1947, § 12-2511.1; Acts 2001, No. 151, § 36; 2003, No. 1473, § 56.

24-4-707. Acts 1961, No. 193, § 1; A.S.A. 1947, § 12-2510.1; Acts 2001, No. 151, § 37.

**24-4-710. [Repealed.]**

**Publisher's Notes.** This section, concerning contributory credited service for General Assembly members and state constitutional officers dying in office and surviving spouse benefits, was repealed

by Acts 2019, No. 448, § 7, effective March 13, 2019. The section was derived from Acts 1981, No. 412, § 1; 1981, No. 491, § 1; A.S.A. 1947, § 12-2580; Acts 1999, No. 627, § 3; 2001, No. 151, § 38.

**24-4-712. [Repealed.]**

**Publisher's Notes.** This section, concerning contributory service accumulated by the Governor, was repealed by Acts 2019, No. 448, § 8, effective March 13,

2019. The section was derived from Acts 1973, No. 447, §§ 1-3; 1975, No. 286, § 1; A.S.A. 1947, §§ 12-319 — 12-321; Acts 2001, No. 151, § 39.

**24-4-714. [Repealed.]**

**Publisher's Notes.** This section, concerning contributory service accrued by constitutional officers, was repealed by Acts 2019, No. 448, § 9, effective March 13, 2019. The section was derived from

Acts 1971, No. 103, § 6; 1971, No. 305, § 3; 1973, No. 754, § 1; 1975 (Extended Sess., 1976), No. 1206, § 1; A.S.A. 1947, § 12-2511.2; reen. Acts 1987, No. 1004, § 1; 2001, No. 151, § 40.

**24-4-726. [Repealed.]**

**A.C.R.C. Notes.** The repeal of this section by Acts 2019, No. 448, § 10, superseded the amendment of this section by Acts 2019, No. 315, § 2861 and Acts 2019, No. 910, §§ 1019 and 1020. The amendment by Acts 2019, No. 315 deleted "and regulations" following "rules" in subsection (d). The amendment by Acts 2019, No. 910 inserted "or the Division of Correction Inmate Care and Custody Fund Account of the State General Government Fund" following "Government Fund" in subsec-

tion (b); and substituted "Division" for "Department" in subsection (f).

**Publisher's Notes.** This section, concerning State penitentiary employees, was repealed by Acts 2019, No. 448, § 10, effective March 13, 2019. The section was derived from Acts 1965 (2nd Ex. Sess.), No. 12, §§ 1-3, 5, 7, 8; A.S.A. 1947, §§ 12-2555 — 12-2557, 12-2559, 12-2561, 12-2562; Acts 2019, No. 315, § 2861; 2019, No. 910, §§ 1019, 1020.

**24-4-727. War Memorial Stadium Commission employees.**

(a) The Board of Trustees of the Arkansas Public Employees' Retirement System is directed to include within the membership of the Arkansas Public Employees' Retirement System, as created by this chapter, all employees of the War Memorial Stadium Commission who are not members of, or eligible for membership in, some other state-supported retirement system other than Social Security.

(b)(1) The effective date of membership of the employees in the Arkansas Public Employees' Retirement System shall be July 1, 1969. All the employees enrolled in the system shall be subject to the rights, privileges, and limitations prescribed in this chapter.

(2) Every such employee shall become a member of the Arkansas Public Employees' Retirement System as a condition of continuing or obtaining employment with the commission.



(c) Any employee included within the membership of the Arkansas Public Employees' Retirement System pursuant to this section shall be given credit for service rendered prior to July 1, 1957, as an employee of a public employer, as defined in § 24-4-101, or as an employee of the commission, if the employee was so employed on July 1, 1957, and on July 1, 1969.

(d)(1)(A) Any employee included within the membership of the Arkansas Public Employees' Retirement System by this section who was an employee of the commission on July 1, 1969, may apply for and receive current service credit for service rendered to the commission from July 1, 1957, to July 1, 1969.

(B) The employee shall receive credit only if the employee pays or causes to be paid to the Arkansas Public Employees' Retirement System Fund all necessary contributions, at the rate of four percent (4%) for the employee and four percent (4%) for the employer from July 1, 1957, to July 1, 1967, and at the rate of four percent (4%) for the employee and five percent (5%) for the employer from July 1, 1967, to July 1, 1969, that would have been paid had the employee been a member of the Arkansas Public Employees' Retirement System during that time.

(2) Interest at the rate of four percent (4%) per annum compounded annually from July 1, 1957, shall be paid on all contributions, which shall be paid in full on or before July 1, 1970.

(e) The Department of Parks, Heritage, and Tourism on behalf of the commission shall pay into the fund such sums of money as are necessary to match the contributions of its employees in the same form and manner as other public employers and shall be subject to all the provisions of this chapter, to the same extent as other public employers.

(f)(1) The payments received by the Arkansas Public Employees' Retirement System under subsection (e) of this section shall be credited to the applicable employers' accumulation account.

(2) The employee payments shall be credited to the member's individual account in the members' deposit account.

**History.** Acts 1969, No. 125, §§ 1-6; A.S.A. 1947, §§ 12-2563 — 12-2568; Acts 2001, No. 151, § 41; 2017, No. 269, § 12; 2019, No. 910, § 5700.

**A.C.R.C. Notes.** Acts 2017, No. 269, § 1, provided: "Transfer of the War Memorial Stadium Commission to the Department of Parks and Tourism.

"(a)(1) The War Memorial Stadium Commission is transferred to the Department of Parks and Tourism by a type 2 transfer under § 25-2-105.

"(2) For the purposes of this act, the Department of Parks and Tourism shall be considered a principal department established by Acts 1971, No. 38.

"(b) All authority, powers, duties, func-

tions, records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting or purchasing of the War Memorial Stadium Commission, are transferred to the Department of Parks and Tourism, except as specified by this act.

"(c) All powers, duties, and functions, including rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications of the War Memorial Stadium Commission are transferred to the Director of the Department of Parks and Tourism.

"(d) The members of the War Memorial

Stadium Commission, and their successors, shall continue to be selected in the manner and serve for the terms provided by the statutes applicable to the War Memorial Stadium Commission except as specified in this act.”

**Amendments.** The 2017 amendment

inserted “Department of Parks and Tourism on behalf of the” in (e).

The 2019 amendment substituted “Department of Parks, Heritage, and Tourism” for “Department of Parks and Tourism” in (e).

## **24-4-741. [Repealed.]**

**Publisher’s Notes.** This section, concerning credit for service in reciprocal system, was repealed by Acts 2019, No.

448, § 11, effective March 13, 2019. The section was derived from Acts 1993, No. 1229, § 1; 2001, No. 151, § 45.

## **24-4-746. Authority to promulgate rules.**

The Board of Trustees of the Arkansas Public Employees’ Retirement System shall have the authority to promulgate such rules as are necessary to provide for the participation of employers defined as public rehabilitative services corporations or other local units of government under the provisions of § 4-34-101 and such local units of government as are provided for under this Code. Provided, however, the board shall not admit or retain any employer whose participation in the Arkansas Public Employees’ Retirement System would jeopardize the tax-qualified status of the plan under the Internal Revenue Code, 26 U.S.C. § 1 et seq., or that would subject the plan to additional federal requirements, or to any other consequence that the board would determine to be detrimental to the system.

**History.** Acts 1999, No. 865, § 2; 2001, No. 151, § 47; 2019, No. 315, § 2862.

deleted “and regulations” following “rules” in the first sentence.

**Amendments.** The 2019 amendment

## **24-4-748. Dual full-time employment.**

(a) A person who was included in the Arkansas Public Employees’ Retirement System for service at full-time employment while at the same time employed full time in another position covered under a municipal police pension and relief fund and whose disqualification from the system was due to dual coverage as a member of a municipal police pension and relief fund may receive service credit as a result of the dual coverage if:

(1) After the initial full-time employment when service credit was lost, the person again becomes a member of the system;

(2) The person applies to receive the lost service credit within five (5) years after the reemployment under the system; and

(3)(A) The member pays or causes to be paid:

(i) The employee contributions at the rate of compensation that would have been paid as a system member during that time;

(ii) Employer contributions based on the normal employer cost from the most recently completed regular annual actuarial valuation



and the compensation that would have been paid had the person been a member during that time; and

(iii)(a) Regular interest on the employee and employer contributions.

(b) Interest shall be computed from the date the service was rendered to the date the payment is received by the system.

(B) The member may purchase all of the service or any portion thereof in multiples of one (1) year.

(b) A person who elects to restore credited service under this section shall be limited to receiving credited service in the system for up to five (5) years of the initial dual full-time employment.

(c) The Board of Trustees of the Arkansas Public Employees' Retirement System shall have the authority to promulgate any necessary forms for application to restore the service and reasonable rules to implement this section.

**History.** Acts 2001, No. 1614, § 1; deleted "and regulations" following "rules" in (c).  
2019, No. 315, § 2863.

**Amendments.** The 2019 amendment

## SUBCHAPTER 8 — DEFERRED RETIREMENT OPTION PLAN

### SECTION.

24-4-801. Participation.

24-4-802. Eligibility — Effect of election.

24-4-803. Amount of benefit — Amount of contribution — Interest.

### SECTION.

24-4-804. Cessation of participation — Definition.

**Effective Dates.** Acts 2017, No. 502, § 2: Mar. 15, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Public Employees' Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of § 24-4-101 et seq. are imminently in need of revision and updating to bring the operations of the system into conformance with sound public pension policy; that this act will enable members of the system to obtain benefits in a more time efficient manner; and that this act is immediately necessary because it will allow the system to align its standard of practice with the provisions of the act and thereafter expediently address the needs of its members. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and

safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 552, § 2: Jan. 1, 2018.

Acts 2019, No. 448, § 13: Mar. 13, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Public Employees' Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the system are in imminent need of revision; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the pres-

ervation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 624, § 2: Apr. 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Public Employees' Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that Acts 2019, No. 448, which was immediately effective, contained an error that is in imminent need of revision; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions

impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 518, § 2: Apr. 1, 2021 (date signed). Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that revisions and updates to the Arkansas Public Employees' Retirement System are of great importance for actuarial purposes and to protect member benefits; that with the current coronavirus 2019 (COVID-19) pandemic, state government needs to retain experienced personnel in order to address needed procedures and potential budget issues while continuing to deliver services to the citizens of Arkansas; that passage of this act will permit the immediate continuation in service of the state's experienced personnel; and that this act is necessary to maintain an orderly system of managing member benefits offered by the Arkansas Public Employees' Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on March 31, 2021."

## 24-4-801. Participation.

(a) In lieu of terminating employment and accepting a retirement benefit under the Arkansas Public Employees' Retirement System pursuant to § 24-2-201 et seq. and § 24-4-101 et seq., any person who is a member of the system and who meets the conditions specified in subsection (b) of this section may elect to participate in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan and to defer the receipt of retirement benefits in accordance with the provisions of this subchapter.



(b) The conditions required for full participation in the plan are that the member must have at least thirty (30) years of actual service in the system.

(c) The Board of Trustees of the Arkansas Public Employees' Retirement System, in consultation with its actuary, may promulgate rules lowering the required years of service for entry into the plan to an amount of not less than twenty-eight (28) years of service, subject to an early participation reduction. The reduction will be computed in a manner that is both equitable to all members and actuarially appropriate for the system.

**History.** Acts 1997, No. 1052, § 1; 1999, No. 1325, § 2; 2001, No. 151, § 48; 2019, No. 315, § 2864.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (c).

## **24-4-802. Eligibility — Effect of election.**

(a) When a member of the Arkansas Public Employees' Retirement System elects participation in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan, the member shall fill out an application form as developed by the Board of Trustees of the Arkansas Public Employees' Retirement System. The member's application shall be reviewed to determine whether or not the member meets the eligibility requirements specified in this subchapter. The member's deferred retirement option date shall be the later of:

(1) The first day of the month following the system's determination that the member is eligible for plan participation; or

(2) The date requested by the member on the application.

(b)(1) A member who elects participation in the plan may elect one (1) of the annuity options provided in § 24-4-606.

(2) The election shall be deemed to apply to the member's deferred retirement option plan benefit as well as to the member's monthly retirement benefit from the system at the time it becomes payable.

(c)(1) The election to participate in the plan is irrevocable and the duration of participation in the plan for active members shall not exceed ten (10) years.

(2) Under no circumstances shall a member receive service credit under any state-supported retirement system during a period of participation or following a period of such participation in the same retirement system's plan.

(d) When a member begins participation in the plan, the:

(1) Employee contributions to the system on behalf of the member shall cease; and

(2) Employer contributions to the system on behalf of the member shall continue.

**History.** Acts 1997, No. 1052, § 2; 2001, No. 151, § 49; 2001, No. 762, § 1; 2007, No. 176, § 6; 2011, No. 558, § 2; 2017, No. 502, § 1; 2021, No. 518, § 1.

**Amendments.** The 2017 amendment deleted “second” preceding “month” in (a)(1). The 2021 amendment substituted “ten (10) years” for “seven (7) years” in (c)(1). (a)(1).

### **24-4-803. Amount of benefit — Amount of contribution — Interest.**

(a)(1) The member’s deferred benefit shall be the monthly benefit to which the member would have been entitled if the member had thirty (30) years of service and had actually retired on the member’s deferred retirement option date with regard to the provisions of § 24-4-606 related to annuity options.

(2) If the member has less than thirty (30) years of actual service, but at least twenty-eight (28) years of service, the portion of the member’s deferred benefit that is contributed to the Arkansas Public Employees’ Retirement System Deferred Retirement Option Plan will be reduced by the percentage established by the Board of Trustees of the Arkansas Public Employees’ Retirement System, and then shall be subject to the additional computations as set forth in subsections (b) and (c) of this section.

(b) The member’s deferred option account shall be the account in which shall be accumulated the member’s deferred option contributions, plus interest. Effective July 1, 1999, the Arkansas Public Employees’ Retirement System’s deferred option contributions shall be at least seventy-five percent (75%) of the system’s deferred option benefit with the exact contribution to be determined in accordance with the rules of the board as is actuarially appropriate for the system. The member shall be informed of the amount of his or her deferred option contribution and informed that his or her selection of the deferred retirement option, the time of the retirement deferral, and the selection of the retirement annuity are irrevocable.

(c) The interest on contributions to the member’s deferred option account shall be credited to the individual account balance of the member on an annual basis at the end of each fiscal year. The board shall determine the rate of interest to be credited to each member’s deferred option account.

**History.** Acts 1997, No. 1052, § 3; 1999, No. 535, § 1; 1999, No. 1325, § 3; 2001, No. 151, § 50; 2019, No. 315, § 2865. **Amendments.** The 2019 amendment deleted “and regulations” following “rules” in (b).

### **24-4-804. Cessation of participation — Definition.**

(a) The member’s participation in the Arkansas Public Employees’ Retirement System Deferred Retirement Option Plan shall cease at the time the member separates from service.

(b)(1)(A) When the member’s participation in the plan ceases, the member shall elect to receive the balance in the deferred option account as either a lump sum or as a monthly benefit paid in the form



elected by the member for payment of the deferred retirement benefit.

(B) The Board of Trustees of the Arkansas Public Employees' Retirement System shall determine factors to be used for the conversion of deferred option account balances to monthly amounts.

(2) Furthermore, when the member's participation in the plan ceases, the board shall cause the member's annuity benefit to be paid directly to the member in the form of regular monthly amounts in the same amount and manner as would have been the case if the member had retired on the deferred retirement option date and had made the same election pursuant to § 24-4-606 that was made on or before the deferred retirement option date.

(c)(1) When a member's participation in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan ceases, the member shall separate from service as provided in § 24-4-520 unless the separation period would prevent a popularly elected official from taking or holding office.

(2)(A)(i) This section does not apply to a member who was an employee of the Arkansas Forestry Commission, the Arkansas Livestock and Poultry Commission, or the State Plant Board, and who is a participant in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan who may be eligible for reemployment after satisfying the separation requirements of § 24-4-520(b) as an essential seasonal staff member with the Arkansas Forestry Commission, the Arkansas Livestock and Poultry Commission, or the State Plant Board.

(ii) This section does not apply to a member who was an employee of the Department of Agriculture on or after July 1, 2019, and who is a participant in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan who may be eligible for reemployment after satisfying the separation requirements of § 24-4-520(b) as an essential seasonal staff member with the department.

(B) As used in subdivision (c)(2)(A) of this section, "essential seasonal staff member" means an employee of the department, the Arkansas Forestry Commission, the Arkansas Livestock and Poultry Commission, or the State Plant Board who:

(i) Has specialized knowledge, skill, or training pertaining to necessary duties or tasks to be completed by the department, the Arkansas Forestry Commission, the Arkansas Livestock and Poultry Commission, or the State Plant Board in times of emergency, disaster cleanup, extreme weather, or other circumstances deemed pressing by the department, the Arkansas Forestry Commission, the Arkansas Livestock and Poultry Commission, or the State Plant Board; and

(ii) Is employed by the department, the Arkansas Forestry Commission, the Arkansas Livestock and Poultry Commission, or the State Plant Board on a part-time basis:

(a) During times of emergency, disaster cleanup, extreme weather, or other circumstances deemed pressing by the department, the

Arkansas Forestry Commission, the Arkansas Livestock and Poultry Commission, or the State Plant Board; or

(b) As an instructor to train other staff for times of emergency, disaster cleanup, extreme weather, or other circumstances deemed pressing by the department, the Arkansas Forestry Commission, the Arkansas Livestock and Poultry Commission, or the State Plant Board.

**History.** Acts 1997, No. 1052, § 4; 2001, No. 151, § 51; 2011, No. 38, § 9; 2017, No. 245, § 1; 2017, No. 552, § 1; 2019, No. 448, § 12; 2019, No. 624, § 1; 2019, No. 910, § 121.

**Publisher's Notes.** Acts 2019, No. 624, § 1 specifically amended this section as amended by Acts 2019, No. 448, § 12.

**Amendments.** The 2017 amendment by No. 245 redesignated former (c) as (c)(1); and added (c)(2).

The 2017 amendment by No. 552 substituted "the member shall separate from service as provided in" for "that member is not eligible for employment in any position covered by the plans identified in § 24-2-401(3), except as provided for in" in (c)(1).

The 2019 amendment by No. 448 added "unless the separation period would prevent a popularly elected official from taking or holding office" in (c)(1).

The 2019 amendment by No. 624 substituted "the member shall separate from service as provided in" for "that member is not eligible for employment in any position covered by the plans identified in § 24-2-401(3), except as provided for in" in (c)(1).

The 2019 amendment by No. 910 redesignated (c)(2)(A) as (c)(2)(A)(i) and added (c)(2)(A)(ii); and inserted "the Department of Agriculture" preceding "the Arkansas Forestry Commission" throughout (c)(2)(B).

**Effective Dates.** Acts 2017, No. 552, § 2: Jan. 1, 2018.

## SUBCHAPTER 9 — ARKANSAS RETIREMENT PLAN

### SECTION.

24-4-901. Credited service — Reciprocity.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

### 24-4-901. Credited service — Reciprocity.

(a)(1) Upon the retirement of a member whose credited service results from employment covered by:

(A) The Arkansas Public Employees' Retirement System;



- (B) The State Police Retirement System;
- (C) The Arkansas Teacher Retirement System;
- (D) The Arkansas State Highway Employees' Retirement System;
- (E) The Arkansas Judicial Retirement System;

(F) An alternate retirement plan under § 24-8-101 et seq. or § 24-9-201 et seq.; or

(G) The Arkansas Local Police and Fire Retirement System, the amount of the member's annuity shall be based upon his or her total credited service in force at the time of the member's retirement, exclusive of any minimums.

(2) Each retirement system shall be responsible financially for only that portion of the annuity based upon the credited service in the plan or system.

(3)(A) The final average compensation on which benefits shall be determined shall be based on the period of total credited service for:

- (i) The Arkansas Public Employees' Retirement System;
- (ii) The State Police Retirement System;
- (iii) The Arkansas Teacher Retirement System;
- (iv) The Arkansas State Highway Employees' Retirement System;

and

(v) The Arkansas Local Police and Fire Retirement System, with each plan or system computing the final average compensation by the method as determined by its laws.

(B) Compensation for credited service in the Arkansas Judicial Retirement System or an alternate retirement plan under § 24-8-101 et seq. or § 24-9-201 et seq. shall not be used to determine final average compensation.

(4) The final average compensation for persons receiving benefits from the Arkansas State Highway Employees' Retirement System shall be based on the final average compensation at the date of termination of employment covered by that system.

(5) The benefit program to be applied to each portion of credited service shall be the benefit program in effect in each plan or system at the time of retirement.

(b)(1) Upon the retirement on disability or death in service of a member of either:

- (A) The Arkansas Public Employees' Retirement System;
- (B) The Arkansas Teacher Retirement System;
- (C) The Arkansas State Highway Employees' Retirement System;
- (D) The Arkansas Judicial Retirement System;
- (E) The State Police Retirement System;

(F) An alternate retirement plan under § 24-8-101 et seq. or § 24-9-201 et seq.; or

(G) The Arkansas Local Police and Fire Retirement System, who has credited service in more than one (1) of the plans, an annuity shall be payable based upon the member's total credited service with all systems in force at the time of retirement, with each system being responsible for the payment of such disability or death-in-service

benefits as are provided by the applicable provisions of each system's laws or plan's provisions.

(2) If the greatest benefit payable to a survivor is a minimum percentage of the deceased member's final pay or a minimum dollar amount, then each reciprocal system that has a minimum benefit provision in its plan shall only pay a proportionate share of the minimum amount based on the ratio of service in the system to the total service in all reciprocal systems.

(3) A member who dies in service while a member of one (1) reciprocal system shall be considered as currently employed by all systems in which the member has credited service at the time of death.

(4) If a member has service credit in an alternate retirement plan under § 24-8-101 et seq. or § 24-9-201 et seq., disability and death-in-service benefits shall be contingent on provision of those benefits having been provided by the alternate retirement plan and having been selected by the member as a benefit.

(c) Any person retiring on or after July 1, 1982, with credited service in more than one (1) reciprocal system shall have his or her benefits recomputed based on the provisions of this section.

(d) It is the intent of this section to provide reciprocal service credits, as provided by §§ 24-2-401 — 24-2-405, between contributory and noncontributory members of:

(1) The Arkansas Public Employees' Retirement System;

(2) The Arkansas Teacher Retirement System;

(3) The Arkansas Judicial Retirement System;

(4) The Arkansas State Highway Employees' Retirement System;

(5) The State Police Retirement System;

(6) An alternate retirement plan for a college, university, or the Division of Higher Education provided for under § 24-8-101 et seq. or for a vocational-technical school or the Division of Career and Technical Education, the Adult Education Section, and the Office of Skills Development, provided for under § 24-9-201 et seq.; and

(7) The Arkansas Local Police and Fire Retirement System.

(e) A member of the Arkansas Public Employees' Retirement System who is receiving a retirement annuity from another reciprocal system as defined in subsection (d) of this section shall not be eligible to use the reciprocal provisions of this section or the reciprocal provisions of §§ 24-2-401 — 24-2-405 to determine the benefit payable by the Arkansas Public Employees' Retirement System.

**History.** Acts 2001, No. 151, § 53; 2019, No. 910, § 2368.

**Amendments.** The 2019 amendment, in (d)(6), substituted "Division of Higher Education" for "Department of Higher Education" and "Division of Career and

Technical Education, Adult Education Section of the Division of Workforce Services, and the Office of Skills Development" for "Department of Career Education".



**SUBCHAPTER 10 — RETIREMENT BENEFITS****SECTION.**

24-4-1004. Determination of benefits for civilian firefighters of State Military Department or Department of the Military — Responsibility for additional costs.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

**24-4-1004. Determination of benefits for civilian firefighters of State Military Department or Department of the Military — Responsibility for additional costs.**

(a) For purposes of determining benefits under this chapter, all credited service, whenever earned, of persons employed as civilian firefighters of the State Military Department or Department of the Military as of July 1, 1997, and of persons thereafter employed in those positions shall be treated as public safety member service if the position is one hundred percent (100%) federally funded.

(b) The additional cost to the Arkansas Public Employees' Retirement System as computed by actuarial determination is the responsibility of the employer and is in addition to those costs required by § 24-2-701(c).

(c) Employment as a public safety member shall be credited at one and one-half (1½) times the regular rate for crediting service.

(d)(1) A public safety member who purchases military service credit under § 24-2-502 shall be credited at the regular rate for credited service and not an enhanced rate.

(2) A public safety member shall pay the same rate for the purchase of service credit from the system as a member of the system who is not a public safety member.

**History.** Acts 2011, No. 978, § 4; 2017, No. 437, § 1; 2019, No. 910, § 5548.

**Amendments.** The 2017 amendment added (d).

The 2019 amendment inserted “or Department of the Military” in (a).

## **SUBCHAPTER 11 — CONTRIBUTIONS OF MEMBERS TO THEIR DEPOSIT ACCOUNTS**

### **SECTION.**

24-4-1102. Member contributions.

24-4-1107. Redetermination of benefits.

### **24-4-1102. Member contributions.**

(a)(1) The contributions of a member shall be five percent (5%) of the member’s annual compensation and shall be placed in the member’s deposit account as provided in § 24-4-401.

(2) Interest shall be paid on accumulated member contributions at the rate of two percent (2%) per annum.

(3) As used in this subsection, “compensation” has the same meaning as in § 24-4-101.

(4)(A) Beginning July 1, 2022, and continuing each following fiscal year, the contribution rate shall be increased in increments of twenty-five hundredths of one percent (0.25%) per fiscal year.

(B) An increase to the contribution rate under subdivision (a)(4)(A) of this section shall not result in a contribution rate greater than seven percent (7%).

(b)(1) For purposes of deferring federal and state income tax under 26 U.S.C. § 414(h)(2), as adopted by § 26-51-414, the employer shall pick up the member’s contributions to the Arkansas Public Employees’ Retirement System required by this section payable on or after July 1, 2005.

(2)(A) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of salary to a member.

(B) The employer shall be solely responsible for remitting member contributions to the system in a manner consistent with § 24-4-202, including without limitation compliance with deadlines and penalties.

(C) A deduction shall be made from each member’s salary equal to the amount of the member’s contribution picked up by the employer.

(D) For all other purposes, member contributions picked up by the employer shall be considered member contributions.

(c) Upon termination of covered service, a former member may request a refund of the former member’s accumulated contributions under § 24-4-603, except that interest will be credited on all balances for service through the last completed fiscal year as provided in § 24-4-209(a).

**History.** Acts 2005, No. 2084, § 4; 2007, No. 176, § 7; 2011, No. 20, § 4; 2019, No. 526, § 1; 2021, No. 365, § 2.

**Amendments.** The 2019 amendment substituted “two percent (2%)” for “four percent (4%)” in (a)(2).



The 2021 amendment added (a)(4).

CASE NOTES

**Applicability.**

Agency decision was not clearly wrong that this section did not apply to the mother, a noncontributory member, where the years at issue were from 1978 to 1990, and not prior to 1978 as required by the

definition of “contributory member” under § 24-4-101, and the mother had not contributed any percentage of her salary during that time. *Harrison v. Ark. Pub. Employees’ Ret. Sys.*, 2019 Ark. App. 179, 574 S.W.3d 705 (2019).

**24-4-1107. Redetermination of benefits.**

(a) Each July 1 the Arkansas Public Employees’ Retirement System shall redetermine the amount of each monthly benefit that has been payable by the system for at least twelve (12) calendar months. The redetermined amount is payable for the following twelve (12) calendar months.

(b) The redetermined amount is the amount of the benefit payable as of the immediately preceding July 1 increased by three percent (3%).

(c)(1) If a person is first hired by a system-covered employer on or after July 1, 2022, and retires under the eligibility requirements of the system, the monthly benefit for the person shall be redetermined in accordance with subdivision (c)(2) of this section.

(2)(A) The redetermined amount for a person described in subdivision (c)(1) of this section shall be the amount of the monthly benefit otherwise payable as of the immediately preceding July 1 increased by the lesser of three percent (3%) or the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor over the one-year period ending in the December immediately preceding the date for which the redetermined amount is being calculated.

(B) The redetermined amount of the monthly benefit to be paid to the person shall not be less than the redetermined amount of the monthly benefit paid to the person in the preceding year.

**History.** Acts 2005, No. 2084, § 4; 2021, No. 366, § 2.

**Amendments.** The 2021 amendment added (c).

CHAPTER 5

ARKANSAS STATE HIGHWAY EMPLOYEES’  
RETIREMENT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. DEFERRED RETIREMENT OPTION PLAN.

**A.C.R.C. Notes.** Acts 2019, No. 910, § 6341, provided: “Effect of transfer on retirement system membership and health

insurance plan participation.

“(a) As used in this section, ‘retirement system’ means:

"(1) The Arkansas Teacher Retirement System, established by the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;

"(2) The Arkansas State Highway Employees' Retirement System, established by § 24-5-103;

"(3) The Arkansas Public Employees' Retirement System, established by § 24-4-103;

"(4) The State Police Retirement System, established by § 24-6-203;

"(5) The Arkansas Judicial Retirement System, established by § 24-8-201 et seq.;

"(6) An alternate retirement plan for:

"(A) A college, university, or the Department of Higher Education provided for under § 24-7-801 et seq.; and

"(B) A vocational-technical school or the Department of Career Education provided for under § 24-7-901 et seq.;

"(7) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.; and

"(8) A firemen's relief and pension fund or a policemen's pension and relief fund provided for under § 24-11-101 et seq.

"(b) If this act results in an employee who is a current member of a retirement system prior to the effective date of this act being transferred to or affiliated with a cabinet-level department that is covered by a different retirement system than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act by written election and notice to the new employer and affected retirement system, make a one-time choice to:

"(1) Remain in his or her same retirement system prior to the effective date of this act, under the same conditions then

provided by law or as may later be provided by law; or

"(2) Become a member of the retirement system of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions for a reciprocal member to be transferred as an active member to a reciprocal system as currently provided by law under the system to which the reciprocal member is transferred.

"(c) If this act results in an employee being transferred to or affiliated with a cabinet-level department that is covered by a different health insurance plan than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act, make a one-time choice between:

"(1) Continuing to participate in his or her health insurance plan prior to the effective date of this act, under the same conditions then provided by law or as may later be provided by law; or

"(2) Participating in the health insurance plan of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions then provided by law or as may later be provided by law.

"(d)(1)(A) A retirement system may issue policies establishing the procedure for an employee to exercise benefit options under subsection (b) of this section.

"(B) The State and Public School Life and Health Insurance Board may issue policies establishing the procedure for an employee to exercise benefit options under subsection (c) of this section.

"(2) A policy under subdivision (d)(1) of this section is not a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

24-5-101. Definitions.

24-5-103. Establishment of system.

24-5-104. Board of trustees.

24-5-105. Cost of administration — Payment of benefits and adjustment of errors.

24-5-106. Establishment of retirement fund.

24-5-107. Membership.

24-5-108. Members' contributions.

24-5-109. Employer contributions.

### SECTION.

24-5-110. Credit for prior and current service in department.

24-5-112. Eligibility for benefits — Voluntary retirement.

24-5-113. Eligibility for benefits — Disability retirement — Definition.

24-5-117. Benefits — Withdrawal from service.

24-5-118. Benefits — Annuity options.

24-5-119. Redetermination of benefits.



## SECTION.

24-5-122. Early retirement incentives.

24-5-125. Eligibility to receive increase in benefits.

## SECTION.

24-5-127. Creditable service.

**Effective Dates.** Acts 2017, No. 610, § 2: July 1, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the law prohibits a publicly supported retirement system from implementing a benefit enhancement if it would cause the publicly supported retirement system's unfunded actuarial accrued liabilities to exceed a thirty-year amortization; that the law prohibits a publicly supported system from implementing a benefit enhancement if it has unfunded actuarial accrued liabilities being amortized over a period exceeding thirty (30) years until the unfunded actuarial accrued liability is reduced to a level less than the standards prescribed by law; that the Arkansas State Highway Employees' Retirement System uses a general life expectancy table; and that the current method of redetermining benefits will cause the retirement system's unfunded actuarial accrued liabilities to exceed a thirty-year amortization if not immediately resolved by increasing the system's assets and reducing its unfunded liabilities. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on and after July 1, 2017."

Acts 2019, No. 295, § 3: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas State Highway Employees' Retirement System has an amortization that exceeds the standard thirty-year amortization of the unfunded actuarial accrued liability prescribed by law; and that this act is necessary because increasing the assets of the system will facilitate reducing the system's unfunded liability. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is

found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 139, § 2: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law applicable to the Arkansas State Highway Employees' Retirement System are in urgent need of revision to bring the operations of the system into conformance with sound public pension policy; that amendments to the law in this act are of great importance to the citizens of this state; and that this act is necessary to maintain an orderly system of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 149, § 2: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law applicable to the Arkansas State Highway Employees' Retirement System are in urgent need of revision to bring the operations of the system into conformance with sound pub-

lic pension policy; that amendments to the law in this act are of great importance to the citizens of this state; that a July 1, 2021 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide for the proper administration of the procedures referenced in this act; and that this act is necessary to maintain an orderly system of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 150, § 3: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law applicable to the Arkan-

sas State Highway Employees' Retirement System are in urgent need of revision to bring the operations of the system into conformance with sound public pension policy; that amendments to the law in this act are of great importance to the citizens of this state; that a July 1, 2021 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide for the proper administration of the procedures referenced in this act; and that this act is necessary to maintain an orderly system of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

## 24-5-101. Definitions.

As used in this chapter:

(1) "Accumulated contribution" means the sum of all amounts deducted from the salary or wages of a member, or paid by a member, and credited to his or her individual account, together with any interest the Board of Trustees of the Arkansas State Highway Employees' Retirement System may have authorized to be credited to the member's account;

(2) "Actuarial equivalent" means a benefit of equal reserve value when reserve is the present value of all payment to be made on account of any benefit based upon such reasonable rate of interest and table of experience as a plan shall adopt from time to time;

(3)(A) "Average compensation" means the average of the highest annual compensation paid to the member during any period of sixty (60) consecutive months of creditable service with the Arkansas Department of Transportation or its predecessor, the Arkansas State Highway and Transportation Department.

(B) For an active member on June 30, 2021, "average compensation" shall not be less than the average of the highest annual compensation paid to the member during any period of the thirty-six (36) consecutive months of creditable service calculated as of June 30, 2021;

(4) "Board" means the Board of Trustees of the Arkansas State Highway Employees' Retirement System;



(5)(A) "Creditable service" means the current service of the member plus the portion of prior service time for which contributions have been made or elected to be made by the member.

(B) Retirement benefits shall be computed upon the creditable service of the member.

(C) The board shall determine by appropriate rules how much service in any fiscal year is the equivalent of a year of creditable service;

(6) "Current service" means service as an employee of the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation after the date of establishment of the system and may include the period of time during which the employee's service may have been interrupted by service in the United States Armed Forces. The annual earnings for a military service period shall be computed in the manner set forth for prior service in subdivision (12) of this section;

(7)(A) "Employee" means any employee of the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation whose compensation is, or was, payable on an hourly, biweekly, monthly, annual, or other basis by the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation, including any employee of the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation whose salary is paid or reimbursed, in whole or in part, from federal or other funds.

(B) "Employee" does not include persons who are employees of the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation on or after July 1, 1997, and who are eligible for benefits under, or who are earning a retirement benefit from, another state-supported retirement system;

(8) "Employer" means the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation;

(9) "Lump-sum service" means that, upon termination of employment with the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation for whatever reason, all lump-sum payments of leave, salary, or other compensation shall not be considered for purposes of computing average earnings and time of service for the Arkansas State Highway Employees' Retirement System;

(10) "Member" means any person who has, by due process, had issued to him or her a certificate of membership in the Arkansas State Highway Employees' Retirement System;

(11) "Prior service" means all service as an employee of the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation before the date of establishment of the system;

(12)(A) "Prior service earnings" means the authenticated record filed with and approved by the board setting forth the salary received by

the member for each fiscal year, or portion thereof, of his or her prior service as an employee, beginning with his or her last year of prior service and continuing in reverse chronological order.

(B) Prior service earnings records may include the period of time during which the employee's service may have been interrupted for service in the United States Armed Forces, in which case the annual earnings for the military service period of the member shall be computed upon the average of his or her last twelve (12) months' compensation from the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation before his or her entry into the United States Armed Forces and the first twelve (12) months' compensation after reemployment by the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation;

(13) "Prorate" means the amount obligated in § 24-5-125 using a ratio of the years of service credit with the Arkansas State Highway Employees' Retirement System divided by the sum of all years of service credit with the reciprocal systems enumerated in § 24-2-401;

(14) "Salary" or "compensation" means the total remuneration earned by an employee for services rendered during any consecutive twelve (12) months or fraction thereof; and

(15) "System" means the Arkansas State Highway Employees' Retirement System.

**History.** Acts 1949, No. 454, § 1; 1953, No. 403, §§ 1, 2; 1969, No. 167, § 1; 1979, No. 126, § 1; 1981, No. 295, §§ 1, 2; 1983, No. 464, § 1; A.S.A. 1947, § 76-1901; Acts 1993, No. 930, § 1; 1997, No. 349, § 1; 1997, No. 955, § 1; 2011, No. 18, § 1; 2011, No. 564, § 1; 2013, No. 309, § 1; 2013, No. 310, § 1; 2017, No. 707, §§ 269-273; 2021, No. 149, § 1.

**Amendments.** The 2017 amendment inserted "or the Arkansas Department of Transportation" in (6), (7)(A), (7)(B), (8), (11) and (12)(B); substituted "Arkansas State Highway and Transportation Department or the Arkansas Department of

Transportation" for "department" twice in (7)(A); and substituted "United States Armed Forces" for "armed forces" in (12)(B).

The 2021 amendment added (3)(B) and redesignated former (3) as (3)(A); and, in (3)(A), substituted "to the member" for "a member", "sixty (60) consecutive months" for "thirty-six (36) consecutive months", and "the Arkansas Department of Transportation or its predecessor, the Arkansas State Highway and Transportation Department" for "a state employer, as the term 'state employer' is defined in § 24-2-401".

### 24-5-103. Establishment of system.

There is created and established a retirement system for employees of the Arkansas Department of Transportation to be known as the "Arkansas State Highway Employees' Retirement System", all the business of which shall be transacted through a board of trustees as provided for in this chapter.



**History.** Acts 1949, No. 454, § 2; A.S.A. 1947, § 76-1902; Acts 2017, No. 707, § 274. substituted "Department of Transportation" for "State Highway and Transportation Department".

**Amendments.** The 2017 amendment

#### **24-5-104. Board of trustees.**

(a) The administration and control of the Arkansas State Highway Employees' Retirement System shall be vested in a board known as the "Board of Trustees of the Arkansas State Highway Employees' Retirement System".

(b)(1) The board shall consist of seven (7) members:

(A) The Director of State Highways and Transportation;

(B) The Treasurer of State;

(C) The Secretary of the Department of Finance and Administration;

(D) The Chief Engineer of the Arkansas Department of Transportation;

(E) A retiree from the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation; and

(F) Two (2) regularly qualified members of the system.

(2) The board shall cause an election to be held by letter ballot in June of each year, after thirty (30) days' written notice to the membership, for the purpose of electing two (2) employee members and one (1) retiree member who shall serve for two (2) years.

(3) In case of a vacancy of any employee member of the board, the board shall fill the vacancy until the next regular election, when the vacancy shall be filled by the election procedure specified in subdivision (b)(2) of this section.

(c) The officers of the board shall be a chair and a vice chair, who shall be selected annually from their own number by the board, and an executive secretary, who shall be appointed by the board.

(d) The duties of the board shall be:

(1) To make all rules necessary and proper for carrying out the provisions of this chapter;

(2) To provide administrative direction and control of the executive secretary and such clerical staff as may be required;

(3) To provide for actuarial valuations if and when the board deems such action necessary;

(4) To exercise discretionary power and authority in the investment and disbursement of the funds of the system, subject to the conditions prescribed in this chapter;

(5) To designate the necessary medical examiners for disabled members as provided in this chapter;

(6) To serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.;

(7)(A) To provide a one-million-dollar blanket fidelity bond covering board members and those employees of the department who may be responsible for administering the funds.

(B) The premiums for the bond may be paid from the funds appropriated for the administration of the system or may be considered as a cost of administration and borne by the department as provided in § 24-5-105(a); and

(8) To do any and all things necessary for the proper execution of this chapter.

(e) The duties of the executive secretary shall be:

(1) To keep all minutes and other records as directed by the board;

(2) To set up and maintain separate accounts for each member of the system to show the payroll deductions and to transmit the deductions to the bank designated by the trustees as the depository for the system or to the State Treasury, as appropriate;

(3) To prepare and sign, as directed by the board, all vouchers for all valid claims; and

(4) To perform such other administrative duties as may be directed by the board for carrying out the provisions of this chapter.

**History.** Acts 1949, No. 454, §§ 3, 6; 1953, No. 403, § 3; 1969, No. 167, § 2; 1981, No. 295, §§ 3, 6; A.S.A. 1947, §§ 76-1903, 76-1906; Acts 1993, No. 615, §§ 1-3; 1997, No. 250, § 229; 2013, No. 73, §§ 1, 2; 2017, No. 201, §§ 1, 2; 2017, No. 707, § 275; 2019, No. 315, § 2866; 2019, No. 910, § 3554.

**Amendments.** The 2017 amendment by No. 201 substituted “who shall be appointed by the board” for “who shall be an accountant in the Arkansas State Highway and Transportation Department Accounting Division designated by the board to serve as executive secretary, without power to vote and who shall perform the duties provided in this section” in (c);

deleted former (e)(4); and redesignated former (e)(5) as present (e)(4).

The 2017 amendment by No. 707 substituted “Department of Transportation” for “State Highway and Transportation Department” in (b)(1)(D) and (c); inserted “or the Arkansas Department of Transportation” in (b)(1)(E); and substituted “(b)(2)” for “(b)” in (b)(3).

The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (d)(1).

The 2019 amendment by No. 910 substituted “Secretary of the Department of Finance and Administration” for “Director of the Department of Finance and Administration” in (b)(1)(C).

## **24-5-105. Cost of administration — Payment of benefits and adjustment of errors.**

(a) The cost of administering the plan shall be borne by the Arkansas Department of Transportation, except that the Arkansas State Highway Employees’ Retirement System shall pay the expenses incurred for the actuary, the consultant for investments, fees for the members of the medical board of the system, expenses associated with automating the accounting needs of the system, and forms purchased from vendors and identified by letterhead printing as those of the system.

(b)(1) The Treasurer of State shall pay retirement benefits, as defined in this chapter, to retirants only on vouchers signed by the Executive Secretary of the Board of Trustees of the Arkansas State Highway Employees’ Retirement System, or other authorized person, and on warrants or checks issued by the Auditor of State or other designated officer of the state.



(2)(A) The designated disbursing officers for the system are authorized to complete and sign one (1) certification for each state voucher or other designated document that authorizes the Auditor of State, or other official, to draw a state warrant or check on a fund administered by the system.

(B)(i) The voucher or other authorizing document can consist of one (1) or more pages.

(ii) In the event that more than one (1) page is used, then the designated disbursing officer is to manually sign the last page only, and any certification is to be so worded that it will apply to all pages of the document.

(c)(1) Should any change or error in the records of the system result in any member's receiving more or less than he or she would have been entitled to receive had the records been correct, the Board of Trustees of the Arkansas State Highway Employees' Retirement System, upon discovery of the error and so far as is practicable, shall adjust the payments in such a manner that the benefit to which the member was justly entitled shall be paid.

(2) In the event that an overpayment is made to anyone, every legal effort shall be made to recover the overpayment.

**History.** Acts 1949, No. 454, § 6; 1981, No. 295, § 6; A.S.A. 1947, § 76-1906; Acts 1987, No. 213, § 2; 1999, No. 32, § 1; 2017, No. 707, § 276.

**Amendments.** The 2017 amendment, in (a), substituted "Department of Trans-

portation" for "State Highway and Transportation Department" and substituted "system" for "Arkansas State Highway Employees' Retirement System" at the end.

## **24-5-106. Establishment of retirement fund.**

(a) There is created a trust fund to be known as the "Arkansas State Highway Employees' Retirement System Fund", which shall be the depository for moneys in the State Treasury or the designated bank as provided for in this chapter.

(b) The employer shall draw vouchers or cause vouchers to be drawn upon the State Highway and Transportation Department Fund for deposit into the Arkansas State Highway Employees' Retirement System Fund for such sums of money as are provided in § 24-5-109 to match employee contributions as certified by the Executive Secretary of the Board of Trustees of the Arkansas State Highway Employees' Retirement System:

(1) In accordance with the provisions of this section and §§ 24-5-101 — 24-5-105, 24-5-107 — 24-5-109, and 24-5-112 — 24-5-118; or

(2) As provided under § 24-5-137.

(c)(1) The Treasurer of State, or a designated bank, shall be the legal custodian of the securities of the Arkansas State Highway Employees' Retirement System, subject to the orders and directions of the Board of Trustees of the Arkansas State Highway Employees' Retirement System.

(2) The system may deposit with the Treasurer of State, or a designated bank, safekeeping receipts or, in the case of federal book-keeping entries, the evidence of investment that is issued in lieu of the actual securities.

(d) The Attorney General shall serve as legal advisor to the board.

(e) It shall be the duty of the Legislative Auditor to audit the finances of the system one time or more often if either the auditor or the board consider such action necessary.

(f) A decision on whether to invest, not invest, or withdraw from investment the funds of the system shall not be based on a consideration that the location of the investment, fund, company, or any other type of investment vehicle is in the State of Israel.

**History.** Acts 1949, No. 454, § 4; 1969, No. 167, § 3; 1981, No. 295, §§ 4, 5; A.S.A. 1947, § 76-1904; Acts 2011, No. 16, § 1; 2017, No. 796, § 1.

**Amendments.** The 2017 amendment added (f).

### 24-5-107. Membership.

(a) Any employee of the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation, as defined in § 24-5-101(7), shall become a member of the Arkansas State Highway Employees' Retirement System in the manner and under the conditions provided in this chapter.

(b) Membership in the system may be terminated by retirement, disability, superannuation, or death, or by withdrawal, either voluntary or involuntary, from active service in the department.

(c) Any member with not less than five (5) years of creditable service whose employment with the department is terminated for any reason may leave his or her contributions in the Arkansas State Highway Employees' Retirement System Fund and thereafter be entitled to retirement benefits as otherwise provided in this chapter.

**History.** Acts 1949, No. 454, §§ 7, 8; 1969, No. 167, § 4; A.S.A. 1947, §§ 76-1907, 76-1908; Acts 1997, No. 347, § 1; 1997, No. 1053, § 12; 2017, No. 707, § 277.

**Amendments.** The 2017 amendment inserted "or the Arkansas Department of Transportation" in (a).

### 24-5-108. Members' contributions.

(a)(1) A member of the Arkansas State Highway Employees' Retirement System shall be assessed six percent (6%) of his or her salary or wages by payroll deductions, and the Executive Secretary of the Board of Trustees of the Arkansas State Highway Employees' Retirement System shall transmit the payroll deductions from the member's salary or wages to the bank designated as the depository for the funds of the system or to the Treasurer of State, as appropriate.

(2)(A) Beginning on July 1, 2019, the Board of Trustees of the Arkansas State Highway Employees' Retirement System shall assess



the member contribution rate after receiving recommendations from the actuary of the system.

(B) An assessed member contribution rate shall be:

(i) Not more than seven percent (7%) of compensation; and

(ii) Increased by no more than five-tenths of one percent (0.5%) in a single year.

(b)(1)(A) As a means of increasing his or her annual annuity benefits, a member may elect, upon approval by the Board of Trustees of the Arkansas State Highway Employees' Retirement System, to pay into the Arkansas State Highway Employees' Retirement System Fund to the credit of his or her account an amount equal to four percent (4%) of his or her earnings for each year of his or her authenticated prior and current service not covered, plus such interest as the board may prescribe.

(B) Each year, or fractional part thereof, for which such prior and current service contributions are paid shall be added to the current service record of the member in computing his or her retirement benefits under the provisions of §§ 24-5-115 — 24-5-118, subject to the provision that no member may accrue more than thirty-five (35) years of creditable service.

(2)(A)(i) As a means of increasing his or her annual annuity benefits, a member may elect, upon approval by the board, to pay into the fund to the credit of his or her account an amount equal to four percent (4%) of the amount that his or her earnings exceeded seven thousand five hundred dollars (\$7,500) per annum for periods previously covered through June 30, 1969, plus such interest as the board may prescribe.

(ii) These earnings in excess of seven thousand five hundred dollars (\$7,500) per annum on which supplemental contributions have been paid shall be credited to his or her average compensation in his or her service record in computing his or her retirement benefits under the provisions of §§ 24-5-115 — 24-5-118.

(B) The plan for such payment shall be as prescribed by the board.

(c) It is expressly guaranteed that all member contributions shall be held in trust for the exclusive benefit of the individual contributor.

**History.** Acts 1949, No. 454, § 9; 1953, No. 403, §§ 6, 7; 1969, No. 167, § 5; 1975, No. 599, § 1; 1977, No. 722, § 1; 1981, No. 295, § 7; A.S.A. 1947, § 76-1909; Acts 2019, No. 295, § 1.

added the (a)(1) designation; in (a)(1), substituted "A member" for "All members", substituted "his or her salary" for "their salaries", and substituted "member's salary" for "employees' salaries"; and added (a)(2).

**Amendments.** The 2019 amendment

## 24-5-109. Employer contributions.

(a) An employer contribution shall be a set percentage rate of the compensation of the employee as defined in § 24-5-101 and described in § 24-5-202.

(b)(1) The Board of Trustees of the Arkansas State Highway Employees' Retirement System shall propose a set percentage rate after

receiving recommendations from the actuary for the Arkansas State Highway Employees' Retirement System.

(2) The employer contribution rate recommended by the board shall be approved by the State Highway Commission.

(3) The percentage rate shall not be less than twelve and nine-tenths percent (12.9%) of compensation.

(4) The employer contribution rate shall be recommended based on a contribution policy established by the board.

(5) The Arkansas State Highway Employees' Retirement System shall use the contribution rate last approved by the State Highway Commission until a new contribution rate is approved by the State Highway Commission.

**History.** Acts 1949, No. 454, § 10; 1953, No. 403, § 8; 1969, No. 167, § 6; 1975, No. 599, § 2; 1977, No. 722, § 2; 1979, No. 821, § 1; 1981, No. 295, §§ 8-10; A.S.A. 1947, § 76-1910; Acts 2019, No. 295, § 2; 2021, No. 137, § 1.

**Amendments.** The 2019 amendment rewrote (a).

The 2021 amendment rewrote the section heading; deleted (a)(1); rewrote (a); redesignated former (a)(2)(A) as (b)(1); deleted (a)(2)(B); added (b)(2) through (b)(5); and deleted former (b) through (c).

## **24-5-110. Credit for prior and current service in department.**

(a)(1) Any employee of the Arkansas Department of Transportation may make application within one (1) year from the date of becoming a member of the Arkansas State Highway Employees' Retirement System and receive credit for any authenticated prior service rendered as an employee of the department prior to July 1, 1949.

(2) In addition thereto, the employee may receive current service credit for any service rendered as an employee of the department since July 1, 1949, and prior to the date of becoming a member of the system, upon paying into the system to the credit of his or her account an amount equal to four percent (4%) of his or her earnings, not to exceed seven thousand five hundred dollars (\$7,500) per annum, for each year of the authenticated prior service, or current service rendered prior to becoming a member of the system, in the event the employee has not previously obtained credit for such service.

(b)(1) The employee shall pay into the system such necessary contributions and interest as may be prescribed by the Board of Trustees of the Arkansas State Highway Employees' Retirement System within a period of five (5) years.

(2) Not less than one-fifth ( $\frac{1}{5}$ ) of the total prior service and current service contributions shall be paid during each year of the five-year period.

**History.** Acts 1967, No. 254, § 1; A.S.A. 1947, § 76-1913; Acts 1997, No. 347, § 2; 1997, No. 1053, § 13; 2017, No. 707, § 278.

**Amendments.** The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (a)(1).



**24-5-112. Eligibility for benefits — Voluntary retirement.**

(a) A member may retire voluntarily as follows:

(1) At age sixty-five (65), or during any year thereafter until the age of compulsory retirement has been attained, with a minimum of five (5) years of creditable service in the Arkansas State Highway Employees' Retirement System;

(2) At age sixty-two (62), with a minimum of fifteen (15) years of creditable service in the system;

(3) At age sixty (60), with a minimum of twenty (20) years of creditable service in the system; or

(4) Regardless of age, with thirty (30) years of creditable service in the system.

(b)(1) Any retired member who has creditable service with the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation for more than thirty-five (35) years and who is not receiving benefits based on his or her actual creditable service time, on February 27, 1991, shall have his or her annuity adjusted at that time.

(2) The adjustment shall be equivalent to the retirant's original annuity, adjusted for actual service time and subsequent cost-of-living and any ad hoc increases.

(3) The retirant shall be paid such adjusted annuity for each month thereafter.

(c) The Board of Trustees of the Arkansas State Highway Employees' Retirement System, by rule, may reduce the amount of creditable service required to retire voluntarily regardless of age from thirty (30) years of creditable service to an amount of no less than twenty-eight (28) years of creditable service, if the board determines that the change is fair and just to the members of the system and that it is actuarially appropriate.

**History.** Acts 1949, No. 454, § 11; 1963, No. 494, § 3; 1969, No. 167, § 7; 1985, No. 379, § 1; A.S.A. 1947, § 76-1911; Acts 1991, No. 243, § 1; 1997, No. 347, § 3; 1997, No. 1053, § 14; 1999, No. 1325, § 5; 2017, No. 707, § 279; 2019, No. 315, § 2867.

**Amendments.** The 2017 amendment inserted "or the Arkansas Department of Transportation" in (b)(1).

The 2019 amendment substituted "rule" for "regulation" in (c).

**24-5-113. Eligibility for benefits — Disability retirement — Definition.**

(a) A member shall be eligible for disability retirement benefits after five (5) or more years of creditable service in the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation, but no member shall be eligible to receive benefits for a disability incurred prior to his or her becoming a member of the Arkansas State Highway Employees' Retirement System.

(b) No member may be retired on account of disability until conclusive evidence, based on a proper medical examination, has been submitted to the Board of Trustees of the Arkansas State Highway Employees' Retirement System that the member is disabled to the extent that he or she can no longer perform his or her assigned duties.

(c) A member who is retired because of disability shall be required to undergo periodic medical examinations at the discretion of the board.

(d) If and when a medical examination shows that the disability has been removed, disability retirement benefits shall cease.

(e) A disability allowance shall not be granted unless there is conclusive evidence that the disability will be permanent or of long duration.

(f)(1) If a disability retirant secures employment with an employer not considered a state employer, as defined by § 24-2-401, for the purpose of determining whether he or she is capable of returning to employment, then the disability retirant shall be allowed to earn compensation from the employment for a period of time not to exceed nine (9) months, during which period of time the retirant shall receive no monthly benefits from the system.

(2) If the retirant becomes unable to continue his or her employment before the nine-month period expires, then his or her disability retirement benefits from the system shall be reinstated and be effective the first day of the month after terminating employment.

(3) Only one (1) trial work period is allowed any disability retirant, but the nine (9) months need not be consecutive.

(4) The trial work period does not prevent the consideration of any medical evidence which may demonstrate recovery before the ninth month of trial work.

(5)(A) If, at the end of the nine-month trial work period, the retirant wishes to continue his or her employment outside the system, then the disability retirement status shall terminate.

(B) For the purpose of determining eligibility for any other benefit, the retirant shall be considered to have terminated active membership as of the time of disability retirement but for a reason other than disability or death.

(6)(A) If the former disability retirant again becomes an employee of a state employer as defined by § 24-2-401, he or she shall immediately again become a member of the system, and his or her credited service at the time of disability retirement shall be restored.

(B) The amount of the accumulated contributions at the time of his or her disability retirement shall be restored to the member's deposit account, but in no event shall he or she be given service credit for the period he or she was in receipt of his or her disability annuity.

(g) As used in this section, "suitable job or position" means a job or position the requirements of which can be physically or mentally performed, as determined by a physician, and for which the remuneration would be substantially gainful, as defined by the Social Security Administration as the maximum amount that a person under sixty-five (65) years of age may earn.



(h)(1) At least one (1) time each year, the board may require any disability retirant to submit a form attesting to his or her current work status.

(2) If such a retirant refuses to submit the form, his or her disability annuity may be suspended by the board until the form is properly submitted to the board.

(3) If his or her refusal continues for one (1) year, all his or her rights in and to a disability annuity may be revoked by the board.

**History.** Acts 1949, No. 454, § 11; A.S.A. 1947, § 76-1911; Acts 1997, No. 347, § 4; 1997, No. 1053, § 15; 2017, No. 707, § 280.

**Amendments.** The 2017 amendment inserted "or the Arkansas Department of Transportation" in (a).

### 24-5-117. Benefits — Withdrawal from service.

(a)(1) In the case of withdrawal from service within less than one (1) year after having become a member of the Arkansas State Highway Employees' Retirement System, the Board of Trustees of the Arkansas State Highway Employees' Retirement System, upon request, shall pay to the member all of his or her accumulated contributions without interest.

(2)(A) If withdrawal occurs after one (1) year of membership in the system, the board, upon request, shall pay to the member all of his or her accumulated contributions plus interest as determined by the board.

(B) The member so reimbursed shall have no legal claim on any contribution made by the state with a view to his or her retirement.

(3) Payment to a member under the conditions set forth in this subsection shall be made as provided by the board.

(4) A member's interest in the Arkansas State Highway Employees' Retirement System shall be exempt from attachment and execution.

(b)(1) In the case of an employee's withdrawal from service after becoming a member of the system and when the employee's contribution has accumulated to a total of less than two hundred fifty dollars (\$250), then the employee's accumulated contribution shall become forfeit to the Arkansas State Highway Employees' Retirement System Fund unless withdrawn by the former employee from the fund within the first three (3) years following the employee's termination of service with the Arkansas Department of Transportation, provided that such employee is not a member of a reciprocal system.

(2) In the event of forfeiture to the fund, the former employee shall have no further claim upon the Arkansas State Highway Employees' Retirement System.

(c) The payment of the cost of the refunded service shall be based on an actuarial equivalent as prescribed by the board if a member:

(1) Is reemployed by a state employer;

(2) Has received a refund from the Arkansas State Highway Employees' Retirement System; and

(3) Seeks to reinstate time withdrawn.

**History.** Acts 1949, No. 454, § 12; 1969, No. 167, § 9; 1979, No. 126, § 2; A.S.A. 1947, § 76-1912; Acts 1999, No. 33, § 1; 2011, No. 564, § 3; 2017, No. 707, § 281.

**Amendments.** The 2017 amendment substituted "Department of Transportation" for "State Highway and Transportation Department" in (b)(1).

### 24-5-118. Benefits — Annuity options.

(a) Before the date the first payment of an annuity becomes due, but not thereafter, a person about to become a retirant may elect, in lieu of a straight life annuity as set forth in § 24-5-115, to have the annuity reduced and to nominate a beneficiary, as provided by Option A or Option B:

(1) Option A.

(A)(i) Under Option A, an annuity payable to the retirant shall be reduced by an amount calculated to provide an actuarially equivalent benefit to the annuity payable under § 24-5-115.

(ii) This subdivision (a)(1)(A) shall apply to all members and retirants.

(B) If the retirant dies before having received one hundred twenty (120) monthly payments of the reduced annuity, the reduced annuity to which the retirant would have been entitled, if living, shall be paid for the remainder of the one-hundred-twenty-month period to such person as the deceased retirant shall have nominated by written designation, duly executed and filed with the Board of Trustees of the Arkansas State Highway Employees' Retirement System.

(C) If the beneficiary does not survive the retirant, the retirant may name another beneficiary, or failing to name a beneficiary, the annuity reserve for the annuity for the remainder of the one-hundred-twenty-month period shall be paid to the retirant's estate.

(D) If the beneficiary survives the retirant but dies before the end of the one-hundred-twenty-month period, the annuity reserve for the annuity for the remainder of the one-hundred-twenty-month period shall be paid to the beneficiary's designated beneficiary; or

(2) Option B.

(A)(i)(a) Under Option B, an annuity payable to the retirant and surviving beneficiary shall be reduced by an amount calculated to provide an actuarially equivalent benefit to the annuity payable under § 24-5-115.

(b) The reduction factor is calculated as the ratio of the actuarial present value of a joint and a fifty percent (50%) survivor annuity to the actuarial present value of the annuity payable under § 24-5-115.

(c) The present values are calculated using standard actuarial formulas and based on a mortality table and discount interest rate calculated by the plan's actuary.

(d) This subdivision (a)(2)(A)(i) applies to all members and retirants.

(ii) Upon the retirant's death, one-half ( $\frac{1}{2}$ ) of the reduced annuity to which the retirant would have been entitled, if living, shall be paid



to the surviving beneficiary for the remainder of his or her life, if the beneficiary was either the retirant's spouse for at least one (1) year immediately preceding the first payment due date of the retired member's annuity or another person age forty (40) or older on the first payment due date receiving more than one-half ( $\frac{1}{2}$ ) of his or her support from the retirant for at least two (2) years immediately preceding the first payment due date of the retired member's annuity.

(iii) If both the retirant and his or her named beneficiary die before the annuity payments have amounted to the sum of the member's accumulated contributions and interest that is vested at the date of retirement, the difference between the benefits paid and the member's contribution account at the date of retirement shall be paid to the estate of the person to whom the last annuity preceding death was paid.

(iv) If no annuities had been paid prior to the member's death, then the balance in the member's account shall be paid to the member's estate.

(B)(i) Should the eligible beneficiary of a member retirant who selected Option B predecease the member retirant, or if divorce or other marriage dissolution occurs, or should the beneficiary who is not a spouse cease to be a qualified beneficiary, then the retirant, by written notification to the Arkansas State Highway Employees' Retirement System, may cancel Option B chosen at retirement and return to a straight life annuity, to be effective the month following receipt of the notification by the system.

(ii) The straight life annuity so elected shall then be the amount of the Option B annuity at the date of notification, less any increase that is excluded from the base annuity, multiplied by a fraction, the numerator of which is one hundred (100) and the denominator of which is the percentage of the straight life annuity that the retirant received at the date of retirement, plus the nonbase increase that was excluded in the computation. The effect of the foregoing shall be that the retirant's monthly annuity, after cancellation of Option B, shall be the same amount that it would have been had a straight life annuity been selected at the date of retirement.

(iii) No further changes in benefit options for retirants shall be permitted.

(b) If an active member with five (5) or more years of credited service, including credited service for the year immediately preceding his or her death, dies in employer service before retirement, the applicable benefits provided in this section shall be paid upon written application to the board. It is the intent of this section to include all surviving spouses or beneficiaries, regardless of the time of the death of the member.

(c) The effective date of the benefits provided in this section shall in no event be prior to the first day succeeding the member's death.

(d) A member's surviving spouse who was married to the member at least the one (1) year immediately preceding his or her death shall

receive an annuity computed in the same manner in all respects as if the member had:

(1) Retired the date of his or her death with entitlement to an annuity provided for in § 24-5-115;

(2) Elected the Option A survivor annuity provided for in subdivision (a)(1) of this section; and

(3) Nominated his or her spouse as joint beneficiary provided for in subdivision (a)(2)(A) of this section.

**History.** Acts 1949, No. 454, § 12; 1067, § 1; 1999, No. 1508, § 7; 2003, No. 1971, No. 246, § 1; 1975, No. 599, § 3; 205, § 1; 2013, No. 1134, § 1; 2021, No. 1983, No. 464, § 2; 1985, No. 106, § 1; 139, § 1.  
**Amendments.** The 2021 amendment substituted "one (1) year" for "two (2) years" in (a)(2)(A)(ii).

### 24-5-119. Redetermination of benefits.

(a) Beginning with the July 1 which is at least twelve (12) full months after the effective date of each benefit, the amount of each benefit shall be redetermined, and the redetermined amount shall be payable for the ensuing year.

(b)(1) The redetermined amount shall be the amount of the benefit otherwise payable as of the immediately preceding July 1 increased by the lesser of three percent (3%) or the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor over the one-year period ending in the December immediately preceding the date for which the redetermined amount is being calculated.

(2) However, the redetermined amount of the benefit to be paid shall not be less than the redetermined amount of the benefit paid in the preceding year.

**History.** Acts 1975, No. 599, § 4; 1979, No. 821, § 2; 1983, No. 479, § 2; 1985, No. 611, § 2; A.S.A. 1947, §§ 76-1912.4, 76-1912.6; Acts 1987, No. 809, § 4; 1995, No. 407, §§ 1, 4; 1999, No. 335, § 1; 2017, No. 610, § 1.

**Amendments.** The 2017 amendment redesignated former (b) as (b)(1); in (b)(1), inserted "the lesser of" and added "or the

percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor over the one-year period ending in the December immediately preceding the date for which the redetermined amount is being calculated"; and added (b)(2).

### 24-5-122. Early retirement incentives.

(a)(1) Any member of the Arkansas State Highway Employees' Retirement System who retires as provided in § 24-5-112, shall receive an annuity consisting of the benefits provided in §§ 24-5-115 and 24-5-118, provided the member is an active member of the system on March 12, 1987, and is vested for a full age and service annuity on March 12, 1987, and has credit in the system for thirty-six (36) consecutive months of actual service with the system immediately prior



to the member's effective retirement date, and he or she may choose two (2) of the retirement incentives from subdivisions (a)(2)-(5) of this section, provided the member retires during the period between March 12, 1987, and January 1, 1988, inclusive.

(2) In addition to the member's regular annuity, the system will pay to the State Employees Group Insurance Plan, or a successor plan by whatever name it may be known, the total insurance premium for the health, hospitalization, and basic life insurance for the member only, provided that the member was insured by the state group plan at the date of retirement.

(3) For the purpose of computing the member's annuity, the highest twelve (12) months' salary for which contributions have been paid to the system will be substituted for the member's average compensation as provided by §§ 24-5-112 and 24-5-114 — 24-5-118.

(4) For the purpose of computing the member's annuity, an additional service credit equal to ten percent (10%) shall be added to the member's service credit at the date of retirement, even though the service thus added exceeds the thirty-five (35) years maximum stated in § 24-5-112(b).

(5)(A) The retiring member may receive a retirement bonus which is a lump-sum payment equal to ten percent (10%) of the final twelve (12) months' actual salary earned by the member to the date of retirement, not to exceed five thousand dollars (\$5,000).

(B) The retirement bonus shall be paid from funds appropriated to the system.

(b)(1) An active member of the system on March 12, 1987, whose benefits are vested and who is entitled to a reduced annuity as provided by § 24-5-114 on July 1, 1987, and who has credit in the system for thirty-six (36) consecutive months of actual service with the system immediately prior to the effective retirement date may choose two (2) of the retirement incentives from subdivisions (b)(2)-(6) of this section, provided the member retires during the period July 1, 1987, through January 1, 1988, inclusive.

(2) In addition to the member's reduced early annuity, the system will pay to the State Employees Group Insurance Plan, or to a successor plan by whatever name it may be known, the total insurance premium for the health, hospitalization, and basic life insurance for the member only, until the retired member has attained age sixty-five (65) years of age, provided that the member was insured by the state group plan at the date of retirement.

(3) For the purpose of computing the member's reduced annuity, the highest twelve (12) months' salary, for which contributions have been paid to the system, will be substituted for the member's average compensation as provided by §§ 24-5-112 and 24-5-114 — 24-5-118.

(4) If the member is eligible for an early reduced annuity as provided by § 24-5-114 and is within two (2) years of full annuity age, then the member's annuity will not be reduced because of early retirement.

(5) If the member has attained the full benefit age as provided by § 24-5-114 and is within two (2) years of attaining the service require-

ment for a full annuity, then the member's annuity will not be reduced because of early retirement.

(6)(A) The retiring member may receive a retirement bonus which is a lump-sum payment equal to ten percent (10%) of the final twelve (12) months' actual salary earned by the member to the date of retirement, not to exceed five thousand dollars (\$5,000).

(B) The retirement bonus shall be paid from funds appropriated to the Arkansas Department of Transportation for salaries.

(c) Any employee of the department retired under this law shall not be eligible for subsequent employment, as an employee, by any state agency whose employees are covered by a state-supported retirement system.

(d)(1) For those department employees who retire pursuant to this section, the amount paid by the system as the cost of the employee's health and basic life insurance shall not exceed the amount of the employer's contribution for the coverage on the date of the employee's retirement and may be reduced at the time the employee qualifies under Medicare or Medicaid programs.

(2) Any future increase in the cost of this coverage shall be borne by the employee and not by the system from which the employee retired.

(e) No position being vacated as a result of an employee's retiring pursuant to this section shall be filled without the written approval of the Governor or the Chief Fiscal Officer of the State.

**History.** Acts 1987, No. 187, §§ 5-9; substituted "Department of Transportation" for "State Highway and Transportation Department" in (b)(6)(B).  
2017, No. 707, § 282.

**Amendments.** The 2017 amendment

## **24-5-125. Eligibility to receive increase in benefits.**

(a)(1) In order to help offset the cost of health insurance and health care, a member who is receiving benefits from the Arkansas State Highway Employees' Retirement System before, on, or subsequent to July 1, 1999, shall have added to his or her annuity as determined under § 24-5-115 no less than the sum of one hundred twenty-five dollars (\$125) per month, provided that:

(A) The Board of Trustees of the Arkansas State Highway Employees' Retirement System may elect and is granted the authority to increase that additional monthly sum to all such eligible individuals in an amount determined by the board as necessary to help offset the ever-escalating costs of health insurance and health care;

(B) The additional monthly sum shall not exceed two hundred fifty dollars (\$250) per month; and

(C) A member who initiates receiving benefits:

(i) July 1, 2005, through June 30, 2009, has at least five (5) years of service in the system; or

(ii) July 1, 2009, has at least ten (10) years of service in the system.

(2) No benefit enhancements provided by this section shall be implemented if it would cause the publicly supported retirement system's



unfunded actuarial accrued liabilities to exceed a thirty-year amortization.

(3)(A) A member beginning participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan after June 30, 2021, shall be ineligible to receive the amount described in subdivision (a)(1) of this section added to his or her annuity to offset the cost of health insurance and health care.

(B) A member participating in the Arkansas State Highway Employees' Deferred Retirement Option Plan shall be eligible to receive the amount described in subdivision (a)(1) of this section added to his or her annuity to offset the cost of health insurance and health care if:

(i) The member ceases participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan;

(ii) The member terminates his or her employment with the Arkansas Department of Transportation; and

(iii) Annuity benefit payments to the member begin.

(b) In its discretion, the board may prorate the benefits provided under this section for any individual retiring after June 30, 1999, but before July 1, 2009, if the individual is also eligible for an additional monthly benefit as a result of credited service under one (1) or more of the other reciprocal systems, as such systems are enumerated in § 24-2-401.

(c) A member who initiates receiving benefits on or after July 1, 2009, shall be eligible for a minimum increase in benefits as determined under § 24-5-115 under the following schedule:

(1) A member who has accrued ten (10) years but less than fifteen (15) years of service in the system is eligible to receive sixty percent (60%) of the healthcare offset as provided in subdivision (a)(1) of this section;

(2) A member who has accrued fifteen (15) years but less than twenty (20) years of service in the system is eligible to receive eighty percent (80%) of the healthcare offset as provided in subdivision (a)(1) of this section;

(3) A member who has accrued twenty (20) years or more of service in the system is eligible to receive one hundred percent (100%) of the healthcare offset as provided in subdivision (a)(1) of this section; and

(4) If the member is receiving retirement benefits as a result of credited service under one (1) or more of the reciprocal systems, as such systems are enumerated in § 24-2-401, the board shall prorate the benefits provided under this section for all members retiring after August 16, 2013.

(d) Nothing contained in this section shall require the system to pay any portion of the benefits provided for in this section.

(e) Members from a reciprocal system will continue to receive their current benefits they are receiving under this section.

(f)(1) Beginning on July 1, 2019, § 24-5-119 shall not apply to an additional monthly benefit that is available to a member under this section.

(2)(A) A member shall continue to receive any previous increases to an additional monthly benefit that he or she received under § 24-5-119 before July 1, 2019.

(B) Section 24-5-119 shall apply to all previous increases to an additional monthly benefit that a member received under § 24-5-119 before July 1, 2019.

**History.** Acts 1991, No. 245, §§ 1-3; 1999, No. 311, § 1; 1999, No. 1066, § 7; 1999, No. 1325, § 8; 2005, No. 144, § 1; 2009, No. 439, § 1; 2013, No. 309, §§ 2, 3; 2019, No. 294, § 1; 2021, No. 150, § 1.

**Amendments.** The 2019 amendment added (f).

The 2021 amendment added (a)(3).

## 24-5-127. Creditable service.

(a) Any employee of the Arkansas State Highway and Transportation Department or the Arkansas Department of Transportation who is a member of the Arkansas State Highway Employees' Retirement System and who has served as a member of the State Highway Commission shall receive partial credit, equal to forty percent (40%) of the time the member served as a member of the commission, as creditable service.

(b) For the purpose of calculating the member's annuity, the portion of creditable service attributed to serving on the commission shall not be considered when determining retirement eligibility, nor shall it be considered when calculating the annuity, but it is to be considered only toward vesting in the system.

**History.** Acts 1993, No. 359, § 1; 2017, No. 707, § 283.

inserted "or the Arkansas Department of Transportation" in (a).

**Amendments.** The 2017 amendment

## SUBCHAPTER 2 — DEFERRED RETIREMENT OPTION PLAN

### SECTION.

24-5-201. Establishment.

24-5-202. Requirements.

### SECTION.

24-5-204. Rules — Applicability.

**Effective Dates.** Acts 2021, No. 138, § 3: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law applicable to the Arkansas State Highway Employees' Retirement System are in urgent need of revision to bring the operations of the system into conformance with sound public pension policy; that amendments to the law in this act are of great importance to the citizens of this state; and that this act is necessary to maintain

an orderly system of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 150, § 3: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the law applicable to the Arkansas State Highway Employees' Retirement System are in urgent need of



revision to bring the operations of the system into conformance with sound public pension policy; that amendments to the law in this act are of great importance to the citizens of this state; that a July 1, 2021 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide for the proper administration of the pro-

cedures referenced in this act; and that this act is necessary to maintain an orderly system of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

### 24-5-201. Establishment.

(a) The Board of Trustees of the Arkansas State Highway Employees' Retirement System may establish a deferred retirement option plan for its members so that, in lieu of terminating employment, they might continue with employment and accept a service retirement benefit pursuant to § 24-5-101 et seq. The board shall be authorized to promulgate rules for a plan to provide this deferred retirement option to its members as is appropriate to maintain a goal of zero (0) cost to the system.

(b) The board shall be authorized to promulgate rules for a plan to provide this deferred retirement option to its members as is appropriate to maintain a goal of zero (0) cost to the system.

**History.** Acts 1997, No. 1073, § 1; deleted "and regulations" following "rules" 2019, No. 315, § 2868.

**Amendments.** The 2019 amendment

### 24-5-202. Requirements.

(a) In the event a plan is established, the Arkansas State Highway Employees' Deferred Retirement Option Plan shall have, as a minimum, provisions which require that:

(1) The Board of Trustees of the Arkansas State Highway Employees' Retirement System approve of the person's participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan;

(2) The member's deferred retirement benefits deposited into an account in which shall be accumulated the member's deferred option contributions plus interest;

(3) The rate of interest to be credited to each member's deferred option account shall be an amount to be determined by the board, to be paid on the mean balance in the account for the fiscal year;

(4) When a member begins participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan, the member's contributions and the state's contributions, as employer, to the Arkansas State Highway Employees' Retirement System shall be as follows:

(A) Beginning on July 1, 2021, the state shall remit contributions to the Arkansas State Highway Employees' Retirement System for a member participating in the Arkansas State Highway Employees'

Deferred Retirement Option Plan in an amount equal to the employer contribution for an active employee as prescribed in § 24-5-109;

(B) For an employee hired before July 1, 2021, the employee contribution to the Arkansas State Highway Employees' Retirement System shall cease upon beginning participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan; and

(C) For an employee hired after June 30, 2021, the employee shall be required to remit member contributions to the Arkansas State Highway Employees' Retirement System in an amount equal to the current active employee contribution rate upon beginning participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan;

(5) A member's selection of the deferred retirement option, the time of the retirement deferral, and the selection of the retirement annuity are irrevocable;

(6) The duration of participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan shall not exceed five (5) years except under subsection (b) of this section; and

(7)(A) The service retirement benefit for a member beginning participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan after June 30, 2021, shall not include an amount added to the member's annuity to offset the cost of health insurance and health care as provided in § 24-5-125(a)(1).

(B) A member beginning participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan after June 30, 2021, shall be eligible to receive an amount added to his or her annuity to offset the cost of health insurance and health care as provided in § 24-5-125(a)(1) if:

(i) The member ceases participation in the Arkansas State Highway Employees' Deferred Retirement Option Plan;

(ii) The member terminates his or her employment with the Arkansas Department of Transportation; and

(iii) Annuity benefit payments to the member begin.

(b)(1) The member may participate in the Arkansas State Highway Employees' Deferred Retirement Option Plan until the later of age sixty-five (65) or the fifth anniversary of the member's entry into the plan.

(2) The member who enters the Arkansas State Highway Employees' Deferred Retirement Option Plan before age sixty (60) may continue to participate in the Arkansas State Highway Employees' Deferred Retirement Option Plan until the member retires or reaches age sixty-five (65).

(3)(A) An employee hired before July 1, 2021, who participates in the Arkansas State Highway Employees' Deferred Retirement Option Plan for more than five (5) years shall contribute six percent (6%) of his or her gross salary to the Arkansas State Highway Employees' Retirement System.

(B) An employee hired after June 30, 2021, shall contribute the current member contribution rate for active members to the Arkan-



as State Highway Employees' Retirement System as prescribed in § 24-5-108.

(4) In order to participate in the Arkansas State Highway Employees' Deferred Retirement Option Plan longer than five (5) years, the amount deposited into the member's deferred retirement option plan account shall be cost neutral to the system, and the system's actuary shall determine this amount.

(c) The board may determine any other provisions of the plan, such as the amount of credited service to participate, the method of collections for participants of the Arkansas State Highway Employees' Deferred Retirement Option Plan, and the payment methods in the event of the death of a participant.

**History.** Acts 1997, No. 1073, § 2; 2003, No. 776, § 1; 2017, No. 707, § 284; 2021, No. 138, §§ 1, 2; 2021, No. 150, § 2.

**Amendments.** The 2017 amendment substituted "Department of Transportation Department" in (b)(3).

The 2021 amendment by No. 138 substituted "shall be as follows" for "shall cease" in the introductory language of (a)(4); inserted (a)(4)(A) through (a)(4)(C); and rewrote (b)(3).

The 2021 amendment by No. 150 added (a)(7).

## 24-5-204. Rules — Applicability.

(a) The Board of Trustees of the Arkansas State Highway Employees' Retirement System, in consultation with its actuary, may promulgate rules to lower the required years of service for entry into the Arkansas State Highway Employees' Deferred Retirement Option Plan authorized by this subchapter, subject to any early participation reduction. The reduction will be computed in a manner that is both equitable and actuarially appropriate for the system.

(b) This section shall apply only to entry into the plan by a person who has twenty-eight (28) or twenty-nine (29) years of creditable service and whose eligibility for retirement is based on rules adopted pursuant to § 24-5-112(c).

**History.** Acts 1999, No. 1325, § 6; 2019, No. 315, § 2869.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in the section heading, and in (a); and substituted "rules" for "regulations" in (b).

## CHAPTER 6

### STATE POLICE RETIREMENT

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE POLICE RETIREMENT SYSTEM.
3. DEFERRED OPTION PLAN.
4. TIER TWO BENEFIT PLAN.
5. ARKANSAS STATE POLICE OFFICERS' TIER TWO DEFERRED RETIREMENT OPTION PLAN.

**A.C.R.C. Notes.** Acts 2019, No. 910, § 6341, provided: "Effect of transfer on retirement system membership and health insurance plan participation.

"(a) As used in this section, 'retirement system' means:

"(1) The Arkansas Teacher Retirement System, established by the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;

"(2) The Arkansas State Highway Employees' Retirement System, established by § 24-5-103;

"(3) The Arkansas Public Employees' Retirement System, established by § 24-4-103;

"(4) The State Police Retirement System, established by § 24-6-203;

"(5) The Arkansas Judicial Retirement System, established by § 24-8-201 et seq.;

"(6) An alternate retirement plan for:

"(A) A college, university, or the Department of Higher Education provided for under § 24-7-801 et seq.; and

"(B) A vocational-technical school or the Department of Career Education provided for under § 24-7-901 et seq.;

"(7) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.; and

"(8) A firemen's relief and pension fund or a policemen's pension and relief fund provided for under § 24-11-101 et seq.

"(b) If this act results in an employee who is a current member of a retirement system prior to the effective date of this act being transferred to or affiliated with a cabinet-level department that is covered by a different retirement system than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act by written election and notice to the new employer and affected retirement system, make a one-time choice to:

"(1) Remain in his or her same retirement system prior to the effective date of this act, under the same conditions then provided by law or as may later be provided by law; or

"(2) Become a member of the retirement system of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions for a reciprocal member to be transferred as an active member to a reciprocal system as currently provided by law under the system to which the reciprocal member is transferred.

"(c) If this act results in an employee being transferred to or affiliated with a cabinet-level department that is covered by a different health insurance plan than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act, make a one-time choice between:

"(1) Continuing to participate in his or her health insurance plan prior to the effective date of this act, under the same conditions then provided by law or as may later be provided by law; or

"(2) Participating in the health insurance plan of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions then provided by law or as may later be provided by law.

"(d)(1)(A) A retirement system may issue policies establishing the procedure for an employee to exercise benefit options under subsection (b) of this section.

"(B) The State and Public School Life and Health Insurance Board may issue policies establishing the procedure for an employee to exercise benefit options under subsection (c) of this section.

"(2) A policy under subdivision (d)(1) of this section is not a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

24-6-101. System for payment of disability and retirement benefits and medical fees — Rules — Fund.



**24-6-101. System for payment of disability and retirement benefits and medical fees — Rules — Fund.**

(a)(1) The Arkansas State Police Commission is authorized and empowered to create and administer a system of paying disability, pension, and retirement pay funds to members of the Division of Arkansas State Police and their dependents and survivors.

(2) The commission shall have the authority and power, whenever it deems best, to pay medical expenses, including hospitalization fees and charges, of state police injured while in the performance of their official duties.

(3)(A) The commission shall have the authority and power to purchase and maintain in force group life, accident, and disability insurance upon the lives and members of the division upon such terms and conditions as it may deem necessary and proper.

(B) However, the purchasing and maintaining of such insurance shall be discretionary, and not mandatory, on the part of the commission.

(b) The commission is authorized and empowered to:

(1) Promulgate and enforce all rules necessary to create and administer a system of paying medical and hospitalization fees, disability benefits, pensions, and retirement pay to members of the division;

(2) Establish and prescribe the eligibility of members of the police force and their dependents and survivors in and to the benefits of the funds; and

(3) Do any and all things necessary to carry out the provisions of this act.

(c)(1) There is created and established the State Police Retirement Fund, to which shall be credited any and all appropriations made by the General Assembly for the purposes outlined in this section.

(2) Any unexpended balance of the appropriation made for the first fiscal year of any biennial period may be used for a like purpose during the second fiscal year.

(3) Vouchers drawn upon and payable from the funds shall be drawn and paid in the manner provided by law for payment of obligations of the division.

**History.** Acts 1945, No. 231, §§ 22-24; A.S.A. 1947, §§ 42-422 — 42-424; Acts 2019, No. 315, § 2870.

**Amendments.** The 2019 amendment deleted “and regulations” following “rules” in (b)(1).

**24-6-103. No waiver of sovereign immunity.****CASE NOTES**

**Cited:** Ark. State Police Ret. Sys. v. Sligh, 2017 Ark. 209, 516 S.W.3d 241 (2017).

## SUBCHAPTER 2 — STATE POLICE RETIREMENT SYSTEM

### SECTION.

- 24-6-201. Definitions.
- 24-6-204. Board of trustees.
- 24-6-206. State Police Retirement Fund  
— Accounts.
- 24-6-207. Membership.
- 24-6-209. Employer's contribution.
- 24-6-210. Credited service.
- 24-6-216. Benefits — Survivor's pension  
upon death of retirant.
- 24-6-217. Benefits — Survivor's pension  
upon death of member.

### SECTION.

- 24-6-218. Benefits — Survivors' benefits  
upon death of officer killed  
in line of duty while not  
member of system — Defi-  
nition.
- 24-6-222. Refund of contributions.
- 24-6-226. Eligibility for benefits — Volun-  
tary retirement for Tier I  
noncontributory members.
- 24-6-227. Benefits generally — Tier I  
noncontributory member.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

### 24-6-201. Definitions.

As used in this subchapter:

(1) "Accumulated contributions" means the sum of all amounts deducted from the salaries of a member and credited to his or her individual account in the members' deposit account, together with regular interest credited thereon;

(2) "Beneficiary" means any person, except a retirant, who is in receipt of, or who is entitled to receive, a pension or other benefit payable from funds of the State Police Retirement System;

(3) "Board" means the Board of Trustees of the State Police Retirement System;

(4) "Contributory member" means a state police officer who was a member of the system prior to January 1, 1978, and who continues to contribute six percent (6%) of his or her compensation to the system;

(5) "Credited service" means the service credited a member by the board to the extent provided in this subchapter;

(6) [Repealed.]

(7) [Repealed.]

(8)(A) "Final average compensation" for contributory service means the average of the annual salaries paid a member for the three (3) years of credited service rendered by the member immediately



preceding his or her last termination of employment with the Division of Arkansas State Police, but the final average compensation shall not exceed that of the highest permanent rank.

(B)(i) "Final average compensation" for Tier I noncontributory service means the average of the highest annual compensation paid a member during any period of sixty (60) calendar months of credited service with the division.

(ii) Should a member have less than sixty (60) calendar months of credited service, "final average compensation" means the monthly average paid to the member during his or her total years of credited service;

(9) "Member" means any state police officer who is included in the membership of the system;

(10) "Noncontributory member" means a state police officer who does not contribute a portion of his or her compensation to the system;

(11)(A) "Pension" means an annual amount payable from funds of the system throughout the life of a person.

(B) All pensions shall be paid in equal monthly installments;

(12) "Pension reserve" means the present value of a pension computed upon the basis of such mortality and other tables of experience, and regular interest, as the board, from time to time, may adopt;

(13)(A) "Public safety member" means a state police officer in the State Police Retirement System who is a Tier I noncontributory member.

(B) Employment as a public safety member shall be credited at one and one-half (1½) times the regular rate for crediting service;

(14) "Regular interest" means such rates of interest per annum, compounded annually, as the board, from time to time, shall prescribe;

(15) "Retirant" means any member who retires with a pension payable from funds of the system;

(16) "Retirement" means a member's withdrawal from the employ of the division with a pension payable from funds of the system;

(17)(A) "Salary" means the compensation paid a member for service rendered as a state police officer.

(B) In no case shall the term "salary" include reimbursement for lodging, meals, or travel expenses;

(18) "Service" means service rendered to the division by a state police officer and shall include previous service, if any, rendered as an Arkansas state ranger, state police officer with the Department of Arkansas State Police, or state police officer with the division;

(19)(A) "State police officer" means any employee of the division or its predecessor entities who holds the rank of state trooper or higher rank, and it shall include the Director of the Division of Arkansas State Police.

(B) The term "state police officer" shall not include any civilian employee of the division, nor shall it include any person who is temporarily employed as a state trooper for an emergency.

(C) In any case of doubt as to who is a "state police officer", the board shall decide the question;

(20) "System" means the State Police Retirement System;

(21) "Tier I" refers to covered employment for those first hired on or before April 2, 1997, as provided for in this subchapter; and

(22) "Tier II" refers to covered employment for those first hired on or after April 3, 1997, as provided for in § 24-6-401 et seq.

**History.** Acts 1951, No. 311, § 1; 1959, No. 484, § 1; 1973, No. 441, § 1; A.S.A. 1947, § 42-451; Acts 2001, No. 151, § 54; 2019, No. 910, §§ 6026-6029.

**Amendments.** The 2019 amendment repealed the defined terms "department" and "director"; substituted "Division of Arkansas State Police" for "department" in (8)(A); substituted "division" for "Department of Arkansas State Police" in

(8)(B)(i); substituted "division" for "department" in (16), (18), and (19)(B); added "state police officer with the Department of Arkansas State Police, or state police officer with the Division of Arkansas State Police" in (18); and in (19)(A), substituted "division or its predecessor entities" for "Department of Arkansas State Police" and "Director of the Division of Arkansas State Police" for "director".

## **24-6-204. Board of trustees.**

(a)(1) The Board of Trustees of the State Police Retirement System is created.

(2)(A) The board shall consist of seven (7) trustees, as follows:

(i) One (1) active or retired member enrolled in the Tier I benefits program;

(ii) One (1) active vested member enrolled in the Tier II benefits program;

(iii) One (1) state police commissioner who shall be appointed by the Governor;

(iv) The Chief Fiscal Officer of the State or his or her designee; and

(v)(a) Three (3) citizens at large who shall be appointed by the Governor.

(b) The citizens at large shall have no interest, direct or indirect, in the Division of Arkansas State Police.

(B) The elections of member trustees shall be held under rules as the board shall from time to time adopt to govern the elections.

(C) The regular term of office of a member trustee shall be seven (7) years.

(D) The elections of the board's officer members shall be held under rules as the board shall from time to time adopt to govern elections.

(E) At the board's first regular meeting following July 1, 2009, the members who are on the board shall draw lots to determine the length of terms.

(F) The terms shall be staggered in the following manner:

(i) One (1) member's term shall expire July 1, 2010;

(ii) One (1) member's term shall expire July 1, 2011;

(iii) One (1) member's term shall expire July 1, 2012;

(iv) One (1) member's term shall expire July 1, 2013;

(v) One (1) member's term shall expire July 1, 2014;

(vi) One (1) member's term shall expire July 1, 2015; and

(vii) One (1) member's term shall expire July 1, 2016.



(b)(1) In the event any trustee provided for in subsection (a) of this section:

(A) Ceases to be a state police officer; or

(B) Fails to attend scheduled meetings of the board for three (3) consecutive meetings unless, in each case, he or she or she is excused by the remaining trustees attending the meetings, the board by resolution shall declare his or her office of trustee vacated as of the date of adoption of the resolution.

(2) If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(c)(1) The administration, management, and control of the State Police Retirement System shall be vested in the board.

(2)(A) The executive director and administrative staff of the Arkansas Public Employees' Retirement System shall be the executive secretary and the administrative staff of the State Police Retirement System.

(B) All administrative records of the State Police Retirement System shall be maintained within the administrative offices of the Arkansas Public Employees' Retirement System.

(3)(A) The executive secretary shall be the disbursing agent of all appropriations made by the General Assembly out of the State Police Retirement Fund.

(B) The executive secretary shall furnish and file with the Auditor of State a bond with a corporate guaranty or indemnity surety thereon in the penal sum of two thousand dollars (\$2,000), the premium on which shall be paid from appropriations made available to the division.

(d) The Attorney General shall serve as legal advisor to the board.

(e)(1) The board shall hold meetings regularly, at least one (1) in each quarter year, and shall designate the time and place of the meetings.

(2) Special meetings may be held in accordance with rules as the board shall adopt.

(3) Four (4) board members, including one (1) officer member, shall constitute a quorum at any meeting of the board, and at least four (4) concurring votes shall be necessary for a decision by the board at any of its meetings.

(4) The board shall adopt its own rules or procedures and shall keep a record of its proceedings, which shall be open to public inspection.

(f) In addition to other duties that are imposed upon the board by this subchapter, the board shall:

(1) Make all rules from time to time as it shall deem necessary in the transaction of its business and in administering the State Police Retirement System;

(2) Provide for the administrative direction and control of the Executive Secretary in the performance of his or her duties as Executive Secretary of the State Police Retirement System;

(3) Provide for an actuarial valuation of the assets and liabilities of the State Police Retirement System or the retirement reserve account

at least one (1) time in each four-year period from and after December 31, 1958;

(4) Adopt mortality and other tables of experience and rates of regular interest that are required for the proper operation of the State Police Retirement System;

(5) Perform the duties of trustee without additional compensation. However, trustees may receive expense reimbursement in accordance with § 25-16-901 et seq.; and

(6)(A) Do all things necessary for the proper administration of the State Police Retirement System and for carrying out and making effective the provisions of this subchapter.

(B) However, no recommendations for benefit enhancements shall be made that would cause the actuarially accrued unfunded liabilities of the State Police Retirement System to exceed thirty (30) years.

**History.** Acts 1951, No. 311, §§ 2, 9; 1959, No. 484, § 2; 1969, No. 647, § 1; A.S.A. 1947, §§ 42-452, 42-452.1, 42-459; Acts 1989, No. 23, § 1; 1989, No. 529, § 4[5]; 1997, No. 250, § 230; 2005, No. 68, § 1; 2007, No. 404, § 1; 2009, No. 1242, § 3; 2019, No. 315, § 2871; 2021, No. 415, § 1.

**Amendments.** The 2019 amendment deleted “and regulations” following “rules” in (f)(1).

The 2021 amendment inserted “or retired” in (a)(2)(A)(i).

## 24-6-205. Correction of errors.

### CASE NOTES

#### Sovereign Immunity.

This section did not waive immunity where the officers were not alleging an error in calculating their benefits, but were challenging the statutorily amended interest rate and the trustee's vote to

reduce the interest rate pursuant to that statute, § 24-6-304; further, the Legislature added § 24-6-103 in 2011, which affirms sovereign immunity. *Ark. State Police Ret. Sys. v. Sligh*, 2017 Ark. 209, 516 S.W.3d 241 (2017).

## 24-6-206. State Police Retirement Fund — Accounts.

(a)(1) There is established on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a fund to be known as the “State Police Retirement Fund”, which shall consist of the trust funds designated by law.

(2) This fund shall be used for payment of personal services, operating expenses, investments, benefits, refunds, and for such other purposes as may be authorized by law.

(b) The accounts of the State Police Retirement System shall be the members' deposit account, employer accumulation account, retirement reserve account, and income account, as follows:

(1) Members' Deposit Account.

(A) The members' deposit account shall be the account in which members' contributions shall be accumulated at regular interest and



from which shall be made transfers and refunds of contributions or accumulated contributions, as provided in this subchapter.

(B) Upon the retirement of a member, his or her accumulated contributions standing to his or her credit in the members' deposit account shall be transferred to the retirement reserve account;

(2) Employer Accumulation Account.

(A)(i) The employer accumulation account shall be the account in which shall be accumulated the contributions made by the State of Arkansas to the system.

(ii) Upon the retirement of a member, the difference between his or her pension reserve and his or her accumulated contributions standing to his or her credit in the members' deposit account shall be transferred from the employer accumulation account to the retirement reserve account.

(B)(i) If, at the end of any fiscal year, the sum of the balances in the employer accumulation account and the retirement reserve account is insufficient to equal an amount of ten (10) times the total of the pensions paid from the retirement reserve account during that fiscal year, the Board of Trustees of the State Police Retirement System shall certify to the Treasurer of State that a deficiency exists in the State Police Retirement Fund.

(ii) Upon receipt of that certification, the Treasurer of State shall transfer from the Division of Arkansas State Police Fund to the State Police Retirement Fund an amount equal to ten percent (10%) of the deficiency so certified. When transferred, the amount shall be credited to the employer accumulation account.

(C) All amounts credited to the State Police Retirement Fund in accordance with § 16-92-110 [repealed] shall be credited to the employer accumulation account;

(3) Retirement Reserve Account.

(A) The retirement reserve account shall be the account from which all pensions provided for in this subchapter shall be paid.

(B) If a disability retirant returns to the employ of the Division of Arkansas State Police, his or her pension reserve at that time shall be transferred from the retirement reserve account to the members' deposit account and the employer accumulation account in the same proportion as the pension reserve was originally transferred to the retirement reserve account; and

(4) Income Account.

(A) The income account shall be the account to which shall be credited all interest, dividends, and other income derived from investments of the system, all gifts and bequests received by the system, and all other moneys, the disposition of which is not specifically provided for in this subchapter.

(B) There shall be paid or transferred from the income account all amounts required to credit regular interest to the various accounts of the system except the income account.

(C) Whenever the board determines that the balance in the income account is more than sufficient to cover current charges to the

account, the excess may be transferred by the board to any of the other accounts of the system to cover special needs of the accounts.

(c) A decision on whether to invest, not invest, or withdraw from investment the funds of the system shall not be based on a consideration that the location of the investment, fund, company, or any other type of investment vehicle is in the State of Israel.

**History.** Acts 1951, No. 311, § 3; 1959, No. 484, § 3; 1981, No. 855, § 1; A.S.A. 1947, § 42-453; Acts 2017, No. 768, § 1.

**Amendments.** The 2017 amendment added (c).

## CASE NOTES

### Sovereign Immunity.

State police retirement system and its trustees were entitled to sovereign immunity where it was undisputed that they were arms of the State, and testimony and subdivision (a)(1) of this section demon-

strated that the officers' retirement funds were part of the general treasury until received by the beneficiary. Ark. State Police Ret. Sys. v. Sligh, 2017 Ark. 209, 516 S.W.3d 241 (2017).

### 24-6-207. Membership.

(a) The Director of the Division of Arkansas State Police and all other state police officers shall become members of the State Police Retirement System.

(b) All persons who became, or become, state police officers after March 19, 1951, shall become members of the system.

(c) None of the other employees of the Division of Arkansas State Police shall be eligible to membership in the system, and the conferring of rank upon any such employee shall not, in itself, constitute eligibility to membership in the system.

(d) Any state police officer, upon appointment as Secretary of the Department of Public Safety, shall be eligible to continue his or her membership in the State Police Retirement System.

**History.** Acts 1951, No. 311, § 5; 1953, No. 309, § 1; 1957, No. 308, § 1; 1959, No. 484, § 5; A.S.A. 1947, § 42-455; Acts 2019, No. 910, §§ 6030-6032.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State

Police" for "Department of Arkansas State Police" in (a) and (c); deleted "who were state police officers March 19, 1951, and who continued as state police officers on or after March 19, 1951" following "officers" in (a); and added (d).

### 24-6-209. Employer's contribution.

(a) The Division of Arkansas State Police, as employer, shall make contributions to the State Police Retirement System of twenty-six percent (26%) of active member payroll.

(b)(1) At the request of the Executive Secretary of the State Police Retirement System, the Secretary of the Department of Finance and Administration shall make annual transfers on each June 30 to the system from the remainder of insurance premium taxes enumerated in § 19-6-301(27) before those taxes are transferred to general revenues



enumerated in § 19-6-201(19) the amounts of money necessary to amortize the unfunded liabilities over a period not to exceed thirty (30) years.

(2) These transfers are intended to cover the unfunded accrued actuarial liabilities of the system and shall not be used for the purpose of providing any benefit enhancements for the system.

(3) Members of the system shall not be entitled to any benefit enhancements from these transfers unless funds from sources other than insurance premium taxes are found to provide for the retirement benefit enhancements.

(4) The amount of the transfer shall be determined by computing the dollar amount required based on the actuarially determined employer rate in the most recent annual actuarial valuation and subtracting from that amount the statutory contribution amount specified in subsection (a) of this section and the driver's license reinstatement fees provided by § 27-16-808.

(5) These transfers shall be limited in use solely for the purpose of paying the unfunded accrued actuarial liabilities.

(6) If the transfers under this section exceed eight hundred thousand dollars (\$800,000) per fiscal year, the executive secretary shall notify the Joint Interim Committee on Public Retirement and Social Security Programs, which shall then review the use of the funds and the benefit provisions of the system and the actuarial reports on the system to ensure compliance with the intended purpose of the funds.

**History.** Acts 1951, No. 311, § 3; 1959, No. 484, § 3; 1969, No. 646, § 1; 1973, No. 441, § 2; 1974 (1st Ex. Sess.), No. 93, § 8; 1977, No. 460, § 3; A.S.A. 1947, §§ 42-453, 42-453.1; Acts 1997, No. 1071, § 3; 2001, No. 151, § 56; 2005, No. 1023, § 1; 2007, No. 404, § 2; 2009, No. 654, § 1; 2019, No. 910, §§ 3555, 3556; 2021, No. 415, § 2.

**Amendments.** The 2019 amendment

substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a); and substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (b)(1).

The 2021 amendment substituted "twenty-six percent (26%)" for "twenty-two percent (22%)" in (a).

## 24-6-210. Credited service.

(a)(1) Any member who shall become separated from the employ of the Division of Arkansas State Police by reason of service in the United States Armed Forces shall have the service, not to exceed a total of five (5) years, credited to him or her as division service, but only if he or she returns to the employ of the division within one hundred eighty (180) days from and after termination of the armed service required of him or her and if he or she returns to the members' deposit account the amount of his or her accumulated contributions withdrawn by him or her, together with regular interest from the date of withdrawal to the date of repayment.

(2) In any case of doubt as to the period to be so credited any member, the Board of Trustees of the State Police Retirement System shall have the final power to determine the period.

(3) During the period of armed service and until his or her return to the employ of the division, his or her contributions to the members' deposit account shall be suspended, and his or her balance in the account shall be accumulated at regular interest.

(4) The federal service so credited a member shall be excluded in computing his or her final average compensation.

(b)(1) The board shall determine by appropriate rules the amount of service to be credited any member.

(2) In no case shall less than fifteen (15) days of service rendered in any calendar month be credited as a month of service, nor shall less than ten (10) months of service rendered in any calendar year be credited as a year of service, nor shall more than one (1) year of service be credited any member for all service rendered by him or her in any calendar year.

(c)(1) Except as otherwise provided in this subchapter, should any member leave the employ of the division for any reason except his or her retirement as provided in this subchapter or his or her death, he or she shall thereupon cease to be a member, and his or her credited service at that time shall be forfeited by him or her.

(2) In the event he or she again becomes employed in the division as a state police officer, he or she shall again become a member of the system.

(3)(A) In the event his or her reemployment occurs within a period of five (5) years from and after the date he or she last left the employ of the division, his or her credited service last forfeited by him or her shall be restored to his or her credit, but only if he or she returns to the members' deposit account the amounts he or she may have withdrawn therefrom, together with regular interest from the date of withdrawal to the date of repayment.

(B) Repayment shall be made according to such rules as the board shall adopt from time to time.

(4) Except as otherwise provided in this subchapter, should a person return to the employment of the division after the expiration of a period of five (5) years from and after the date of his or her employment with the division last terminated, he or she shall not have his or her credited service last forfeited by him or her restored to his or her credit.

(5) Upon a member's retirement or death, he or she shall cease to be a member.

**History.** Acts 1951, No. 311, § 6; 1953, No. 309, § 2; 1957, No. 308, § 2; 1959, No. 484, § 6; A.S.A. 1947, § 42-456; Acts 2001, No. 151, § 57; 2019, No. 315, §§ 2872, 2873.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (b)(1) and (c)(3)(B).



**24-6-216. Benefits — Survivor's pension upon death of retirant.**

(a)(1) In the event a retirant dies and leaves a spouse to whom the retirant was married, the surviving spouse shall receive a pension equal to seventy-five percent (75%) of the retirant's pension, but only if the spouse has under care the retirant's dependent children whose dates of birth are prior to the retirant's date of retirement.

(2) When the spouse no longer has under care such a dependent child, the pension shall be reduced to fifty percent (50%) of the retirant's pension.

(3) Upon the spouse's remarriage or death, the pension provided for in this subsection shall terminate.

(b)(1) In the event a retirant dies and leaves a spouse to whom he or she was married and who does not have under care the retirant's dependent children, the surviving spouse shall receive a pension equal to fifty percent (50%) of the retirant's pension.

(2) Upon the spouse's remarriage or death, the pension provided for in this subsection shall terminate.

(c)(1) In the event a retirant dies and does not leave a spouse eligible for a pension as provided for in this section, or in the event the surviving spouse dies or remarries and the pension provided for in subsection (a) of this section is terminated, and there is surviving the retirant a dependent child, or children, each such child shall receive a pension of an equal share of seventy-five percent (75%) of the retirant's pension.

(2) In no case shall the pension payable to any such child exceed twenty-five percent (25%) of the retirant's pension.

(d)(1)(A) A child shall be a dependent child until his or her death, his or her marriage, or his or her attainment of age eighteen (18), whichever occurs first.

(B)(i) However, the age-eighteen maximum shall be extended as long as the child is continuously enrolled as a full-time student at an accredited secondary school or accredited postsecondary institution of higher education, but in no event beyond his or her attainment of age twenty-three (23).

(ii) The eighteen-year maximum shall also be extended for any child who has been deemed physically or mentally incompetent by a court with jurisdiction over the individual or by the Board of Trustees of the State Police Retirement System, for as long as the incompetency exists.

(2) Once a child ceases to be dependent, his or her annuity shall terminate and there shall be a redetermination of the amount payable to any remaining dependent children.

(3) The board is authorized to establish through rules a means of verification of enrollment in a secondary school or postsecondary institution of higher education by a surviving dependent child under this section for purposes of pension benefits.

(e)(1) If a surviving spouse who is receiving survivor's benefits under this section remarries, and the benefits are discontinued, and the

surviving spouse again becomes unmarried, benefits provided in this section for the spouse shall be resumed.

(2) Benefits shall be resumed for any surviving spouse who had remarried but is unmarried on that date, but no such benefits will be paid the surviving spouse for any period prior to July 1, 1991.

(f) Before the date his or her first annuity payment becomes due, but not thereafter, a noncontributory Tier I member may elect to:

(1) Receive his or her annuity as a straight life annuity; or

(2)(A) Have his or her annuity reduced and nominate a beneficiary in accordance with the option provisions of § 24-6-408.

(B) However, in the instance of Option B75 under § 24-6-408(a)(4), the reduced annuity shall be seventy-eight percent (78%) if the retirant's age and his or her beneficiary's age are the same on the first payment due date. The reduced annuity of seventy-eight percent (78%) shall be:

(i) Decreased by three-quarters of one percent (0.75%) for each year the beneficiary's age is less than the retirant's age; or

(ii) Increased by three-quarters of one percent (0.75%), up to a maximum of ninety percent (90%), for each year that the beneficiary's age is more than the retirant's age.

**History.** Acts 1951, No. 311, § 5; 1953, No. 309, § 1; 1957, No. 308, § 1; 1959, No. 484, § 5; 1977, No. 403, § 1; 1981, No. 909, § 8; A.S.A. 1947, § 42-455; Acts 1989, No. 529, § 1; 1991, No. 387, § 1; 1995, No. 731, § 1; 2001, No. 151, § 61; 2009, No. 742, § 3; 2019, No. 315, § 2874.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (d)(3).

## **24-6-217. Benefits — Survivor's pension upon death of member.**

(a)(1) In the case of a member who dies on or after January 1, 1956, and leaves a spouse who has the care of the member's dependent child or children, the surviving spouse shall receive a pension equal to the greater of one thousand eight hundred dollars (\$1,800) per annum or seventy-five percent (75%) of the pension to which the member would have been entitled had he or she retired the day preceding the date of his or her death, notwithstanding that the member might not have been eligible to retire.

(2) When the surviving spouse no longer has the care of the dependent child, the pension shall be reduced to the greater of one thousand two hundred dollars (\$1,200) per annum or fifty percent (50%) of the pension to which the member would have been entitled had he or she retired the day preceding the date of his or her death, notwithstanding that the member might not have been eligible to retire.

(3) Upon the surviving spouse's remarriage or death, the pension provided for in this subsection shall terminate.

(b)(1) In the case of a member who dies on or after January 1, 1956, and leaves a spouse who does not have in his or her care the member's dependent child or children, the surviving spouse shall receive a pension equal to the greater of one thousand two hundred dollars (\$1,200) per annum or fifty percent (50%) of the pension to which the



member would have been entitled had he or she retired the day preceding the date of his or her death, notwithstanding that the member might not have been eligible to retire.

(2) Upon the surviving spouse's remarriage or death, the pension provided for in this subsection shall terminate.

(c)(1) In the event a member dies and does not leave a spouse, or in the event the surviving spouse remarries or dies and there is surviving the member a dependent child or children, each such child shall receive a pension of an equal share of the greater of one thousand eight hundred dollars (\$1,800) per annum or seventy-five percent (75%) of the pension to which the member would have been entitled had he or she retired the day preceding the date of his or her death, notwithstanding that he or she might not have been eligible to retire.

(2) In no case shall the annual pension payable to any such child exceed fifteen percent (15%) of the final average annual salary of the deceased member.

(d)(1) In the event a member who has five (5) or more years of credited service dies and leaves neither a spouse nor children eligible for pensions provided for in subsections (a)-(c) of this section, and there is surviving the member his or her parents, whom the board finds to be dependent upon the member for at least fifty percent (50%) of their support due to lack of financial means, each dependent parent shall receive a pension of an equal share of fifty percent (50%) of the pension to which the member would have been entitled had he or she retired the day preceding the date of his or her death, notwithstanding that the member might not have been eligible to retire.

(2) Upon the remarriage or death of the parent, his or her pension shall terminate.

(e)(1)(A) A child shall be a dependent child until his or her death, his or her marriage, or his or her attainment of age eighteen (18), whichever occurs first.

(B)(i) However, the age-eighteen maximum shall be extended as long as the child is continuously enrolled as a full-time student at an accredited secondary school or accredited postsecondary institution of higher education, but in no event beyond his or her attainment of age twenty-three (23).

(ii) The eighteen-year maximum shall also be extended for any child who has been deemed physically or mentally incompetent by a court with jurisdiction over the individual or by the board, for as long as the incompetency exists.

(2) Once a child ceases to be dependent, his or her annuity shall terminate and there shall be a redetermination of the amount payable to any remaining dependent children.

(3) The board is authorized to establish through rules a means of verification of enrollment in a secondary school or postsecondary institution of higher education by a surviving dependent child under this section for purposes of pension benefits.

(f)(1) If a surviving spouse who is receiving survivor's benefits under this section remarries, and the benefits are discontinued, and the

surviving spouse again becomes unmarried, benefits provided in this section for the spouse shall be resumed.

(2) Benefits shall be resumed for any surviving spouse who had remarried but is unmarried on that date, but no such benefits will be paid the surviving spouse for any period prior to July 1, 1991.

(g)(1) If the member is killed while in the official line of duty and the surviving spouse is eligible for a deferred benefit under this section, the surviving spouse may elect to receive a reduced benefit beginning immediately.

(2) The reduction of the benefit otherwise defined in this section shall be:

(A) Five-tenths of one percent (0.5%) per month for each of the first sixty (60) months that the benefit begins before it would have otherwise begun; plus

(B) Twenty-five hundredths of one percent (0.25%) per month for each month more than sixty (60) months that the benefit begins before it would have otherwise begun.

(3) However, the total reduction under this subsection shall not be more than fifty percent (50%).

(4) Those who otherwise would have been eligible for this benefit on or after July 1, 2002, may also elect this reduced benefit prospectively.

**History.** Acts 1951, No. 311, § 5; 1953, No. 309, § 1; 1957, No. 308, § 1; 1959, No. 484, § 5; 1971, No. 130, §§ 1, 2; 1981, No. 909, § 8; A.S.A. 1947, § 42-455; Acts 1989, No. 529, § 2; 1991, No. 387, § 2; 2003, No. 1735, § 2; 2019, No. 315, § 2875.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (e)(3).

#### **24-6-218. Benefits — Survivors' benefits upon death of officer killed in line of duty while not member of system — Definition.**

(a)(1) In the event any uniformed employee of the Division of Arkansas State Police is killed while in the performance of his or her duties, yet the surviving spouse and surviving children of the uniformed employee of the division are deprived of receiving benefits as prescribed in § 24-6-217 because the uniformed employee was not a member of the system at the time of his or her death, or had not completed any probationary period of service required by rules of the Arkansas State Police Commission, or had not obtained sufficient service for benefits, the surviving spouse may make application to the Board of Trustees of the State Police Retirement System.

(2) Upon establishing proof of the facts set forth in this subsection, the surviving spouse and surviving children shall be eligible for and receive survivors' benefits for himself or herself and the unmarried children of the deceased uniformed employee who was killed in the line of duty, which children are under eighteen (18) years of age or twenty-two (22) years of age while enrolled in an institution of higher education, as provided in § 24-6-217.



(b) Upon the reaching of eighteen (18) years of age by the unmarried children or the failure to enroll in an institution of higher education if the child is under age twenty-two (22), the surviving spouse shall continue to receive benefits as provided by law, but upon his or her remarriage or death, the benefits shall terminate.

(c) It is the specific intent of this section that surviving spouses as described in this section be eligible for survivors' benefits for themselves and any unmarried children under eighteen (18) years of age of the deceased uniformed employee of the division who was killed in the line of duty, or any children under age twenty-two (22) while enrolled in an institution of higher education, irrespective of whether the employee was a member of, or was eligible for benefits under, the State Police Retirement System at the time of his or her death.

(d) Upon certification of these facts by the board, the Secretary of the Department of Finance and Administration shall direct the Treasurer of State to transfer from the Division of Arkansas State Police Fund, annually, to the State Police Retirement Fund an amount equal to the funds expended from the State Police Retirement Fund for the payment of survivors' benefits as authorized in this section in order to reimburse the State Police Retirement Fund therefor.

(e)(1) For purposes of this section, "an institution of higher education" means any public university, college, community college, and any nonpublicly supported not-for-profit college or university.

(2) The board is hereby authorized to establish through rules a means of verification of enrollment in an institution of higher education by a surviving child under this section for purposes of continuation of pension benefits.

**History.** Acts 1967, No. 309, § 1; A.S.A. 1947, § 42-460; Acts 1989, No. 529, § 3; 2019, No. 315, §§ 2876, 2877; 2019, No. 910, §§ 3557, 3558.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a)(1); and deleted "and regulations" following "rules" in (e)(2).

The 2019 amendment by No. 910 substituted "Division of Arkansas State Po-

lice" for "Department of Arkansas State Police" in (a)(1) and (d); substituted "division" for "department" in (a)(1); and substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (d).

## 24-6-222. Refund of contributions.

(a)(1) In the event a member leaves the employ of the Division of Arkansas State Police prior to the date he or she becomes entitled to retire with a pension payable from funds of the State Police Retirement System, he or she shall be paid, upon his or her written application filed with the Board of Trustees of the State Police Retirement System, the accumulated contributions standing to his or her credit in the members' deposit account if his or her separation from the employ of the division occurs after five (5) years from the date he or she last became a member of the system.

(2) If his or her separation from the employ of the division occurs within a period of five (5) years from and after the date he or she last became a member of the system, he or she shall be paid, upon his or her written application filed with the board, his or her accumulated contributions standing to his or her credit in the members' deposit account less the total interest credited to his or her individual account therein.

(b)(1) In the event a member who has twenty (20) years or more of credited service leaves the employ of the division for any reason except his or her retirement as provided in this subchapter, or his or her death, he or she may, if he or she so chooses, remain a member for the exclusive purpose only of receiving his or her pension as provided in § 24-6-214.

(2) The pension shall come the first day of the calendar month next following the month in which his or her application therefor is filed with the board or after the attainment of age fifty (50).

(c)(1) In the event a member dies and does not leave a beneficiary entitled to a pension payable from funds of the system, his or her accumulated contributions standing to his or her credit in the members' deposit account at the time of his or her death shall be paid to such person or persons as he or she shall have nominated by written designation duly executed and filed with the board.

(2) If there is no designated person surviving the member, his or her accumulated contributions shall be paid in accordance with the laws of descent and distribution of the State of Arkansas.

(3) The payments may be made directly to a curator, guardian, administrator, or executor authorized to receive such payments, wherever the representative may be, with or without the appointment of a representative in this state.

(d) Refunds of a member's contributions or accumulated contributions, as the case may be, may be made in equal installments according to such rules as the board may adopt from time to time.

<b>History.</b> Acts 1951, No. 311, § 7; 1953, No. 309, § 3; 1959, No. 484, § 7; 1971, No. 309, § 6; 1977, No. 460, § 2; A.S.A. 1947, § 42-457; Acts 2019, No. 315, § 2878.	<b>Amendments.</b> The 2019 amendment deleted "and regulations" following "rules" in (d).
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## **24-6-226. Eligibility for benefits — Voluntary retirement for Tier I noncontributory members.**

(a)(1) Any member who has acquired five (5) years but less than twenty-eight (28) years of actual service and has attained age sixty-five (65) may retire upon written application filed with the Board of Trustees of the State Police Retirement System.

(2) Any member who has acquired five (5) or more years of actual service and has attained age fifty-two (52) may retire upon written application filed with the State Police Retirement System.



(3) Any member who acquired twenty-eight (28) or more years of actual service may retire at any age upon written application filed with the board.

(4) For those members with less than twenty-eight (28) actual years of service, the age sixty-five (65) requirement shall be reduced by one (1) month for every two (2) months of public safety credit, but in no event to an age younger than fifty-two (52).

(b) This application shall set forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, the member desires to be retired.

(c) Upon the member's retirement, he or she shall receive a pension provided for in § 24-6-216.

**History.** Acts 2001, No. 151, § 62; "twenty-eight (28) or more years" for 2021, No. 415, § 3.

**Amendments.** The 2021 amendment substituted "twenty-eight (28) years" for "thirty (30) years" in (a)(1); substituted "thirty (30) or more years" in (a)(3); and substituted "twenty-eight (28) actual years" for "thirty (30) actual years" in (a)(4).

#### **24-6-227. Benefits generally — Tier I noncontributory member.**

(a)(1) Upon retirement as provided in this subchapter, a member shall receive a straight life pension equal to one and sixty-six-hundredths percent (1.66%) of his or her final average compensation multiplied by the number of years and any fraction of a year of his or her credited service.

(2)(A) In addition, if a member has service resulting from employment in a position covered at any time by Social Security or another federal retirement plan supported wholly or in part by employer contributions, and if that member's age at retirement is younger than:

(i) Social Security's minimum age for an immediate retirement benefit; and

(ii) Age sixty-two (62),  
then the member shall receive a temporary annuity equal to three hundred and twenty-two-thousandths of one percent (0.322%) of the member's final average compensation for each year of his or her credited service.

(B) The temporary annuity shall terminate at the end of the calendar month in which the earliest of the following events occurs:

(i) The member's death;

(ii) The member's attainment of the Social Security minimum age for an immediate monthly benefit; or

(iii) The member's attainment of age sixty-two (62).

(b) In the event a member with five (5) years or more of actual service in the State Police Retirement System ceases to be employed as a state police officer prior to reaching the required age for voluntary retirement and does not withdraw his or her accumulated employee contributions to the system, the member shall be entitled to receive a pension upon reaching what his or her voluntary retirement age would have been if

he or she had continued state police employment from time of termination of employment.

(c) Any member may elect to withdraw his or her accumulated contributions to the system at the time of terminating employment as a state police officer and to waive any pension rights the member may have earned in the system.

(d) It is considered sound public policy that retirement pay not exceed working pay except for increases after retirement caused by inflation. Accordingly, at the time of retirement, the total of the system annuity shall not exceed the member's final average compensation.

**History.** Acts 2001, No. 151, § 62; substituted "one and sixty-six-hundredths percent (1.66%)" for "one and fifty-five-hundredths percent (1.55%)" in (a)(1).  
2021, No. 415, § 4.

**Amendments.** The 2021 amendment

### SUBCHAPTER 3 — DEFERRED OPTION PLAN

#### SECTION.

24-6-301. Election to participate.

#### 24-6-301. Election to participate.

In lieu of terminating employment and accepting a service retirement pension, any state police officer who is a member of Tier I of the State Police Retirement System who has not less than twenty-eight (28) years of credited service and who is eligible to receive a service retirement pension may elect to participate in the Arkansas State Police Officers Deferred Option Plan and defer the receipt of benefits in accordance with the provisions of this subchapter, provided the Board of Trustees of the State Police Retirement System approves the participation in the plan.

**History.** Acts 1995, No. 967, § 1; 2001, substituted "twenty-eight (28) years" for "thirty (30) years".  
No. 151, § 63; 2021, No. 415, § 5.

**Amendments.** The 2021 amendment

#### 24-6-304. Benefits — Rate of return.

### CASE NOTES

**Cited:** Ark. State Police Ret. Sys. v. Sligh, 2017 Ark. 209, 516 S.W.3d 241 (2017).

### SUBCHAPTER 4 — TIER TWO BENEFIT PLAN

#### SECTION.

24-6-404. Eligibility for benefits — Voluntary retirement.

24-6-405. Eligibility for benefits — Disability retirement.

#### SECTION.

24-6-406. Benefits generally.

24-6-411. Benefit provisions — Death.

24-6-412. Refund of contributions.

24-6-414. Maximum benefit limitation.



**Effective Dates.** Acts 2019, No. 511, § 2, provided: "Retroactivity. This act applies retroactively to January 1, 2017."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emer-

gency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

#### 24-6-404. Eligibility for benefits — Voluntary retirement.

(a)(1) Any member who has acquired five (5) years but less than twenty-eight (28) years of credited service and has attained age sixty-five (65) may retire upon his or her written application filed with the Board of Trustees of the State Police Retirement System.

(2) Any member who has acquired twenty-eight (28) or more years of credited service may retire at any age upon his or her written application filed with the board.

(3) For those members with less than twenty-eight (28) credited years of service, the age sixty-five requirement shall be reduced by seventy-five hundredths (0.75) of a month for each credited month of service, but in no event to an age younger than fifty-five (55).

(b) This application shall set forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, the member desires to be retired.

(c) Upon the member's retirement, he or she shall receive a pension provided for in § 24-6-406.

**History.** Acts 1997, No. 1071, § 1; 1999, No. 387, § 3; 2019, No. 950, § 1; 2021, No. 415, § 6.

**Amendments.** The 2019 amendment substituted "credited" for "actual" throughout (a).

The 2021 amendment substituted "twenty-eight (28) years" for "thirty (30)

years" in (a)(1); substituted "twenty-eight (28) or more years" for "thirty (30) or more years" in (a)(2); and substituted "twenty-eight (28) credited years" for "thirty (30) credited years" in (a)(3).

#### 24-6-405. Eligibility for benefits — Disability retirement.

(a)(1)(A) Upon application filed with the Board of Trustees of the State Police Retirement System by a member or by the Director of the Division of Arkansas State Police on behalf of a member, a member who is in the employ of the Division of Arkansas State Police, who has five (5) or more years of actual service, and who becomes totally and permanently incapacitated for duty in the employ of the division by reason of personal injury or disease may be retired by the Board of

Trustees of the State Police Retirement System, but only after a medical examination of the member.

(B) This examination shall be made by or under the direction of a board of medical professionals as defined in the rules of the Board of Trustees of the State Police Retirement System, using the active duty criteria supplied by the division in determining the extent of the disability.

(2) The five-years-of-service requirement contained in this subsection shall not apply to a member whom the Board of Trustees of the State Police Retirement System finds to be in receipt of workers' compensation for his or her disability arising solely and exclusively out of and in the course of his or her employment with the division.

(b) Upon his or her retirement upon account of disability as provided in subsection (a) of this section, a member shall receive a disability pension computed according to the contributory provisions of § 24-6-214 or the noncontributory provisions of § 24-6-227, as applicable.

(c)(1) At least one (1) time each year during the first five (5) years following a member's retirement on account of disability and at least one (1) time in every three-year period thereafter, the Board of Trustees of the State Police Retirement System may, and upon the retirant's application shall, require any disability retirant who has not attained age fifty (50) to undergo a medical examination to be made by or under the direction of the medical professionals designated by the Board of Trustees of the State Police Retirement System.

(2) If the retirant refuses to submit to a medical examination in any such period, his or her disability pension may be suspended by the Board of Trustees of the State Police Retirement System until his or her withdrawal of his or her refusal.

(3) If his or her refusal continues for one (1) year, all his or her rights in and to a disability pension may be revoked by the Board of Trustees of the State Police Retirement System.

(4) If, upon the medical examination of the retirant, the medical professionals designated by the Board of Trustees of the State Police Retirement System report to the Board of Trustees of the State Police Retirement System that the retirant is physically capable of performing the duties of the rank held by him or her at the time of his or her retirement, the retirant shall be returned to the employ of the division, and his or her disability pension shall be terminated.

(d)(1) Upon a disability retirant's return to the employ of the division as provided in subsection (c) of this section, his or her service at the time of his or her retirement shall be restored to his or her credit.

(2) He or she shall be given service credit for the period he or she was receiving a disability pension if within that period he or she was in receipt of workers' compensation on account of his or her division employment.

(e) In the event a disability retirant who has not attained age fifty-five (55) performs personal services in an occupation, business, or employment, his or her disability pension shall be reduced so that the



sum of his or her disability pension and the compensation received by him or her from the occupation, business, or employment shall not exceed his or her annual rate of salary at the time of his or her retirement.

**History.** Acts 1997, No. 1071, § 1; 1999, No. 387, § 4; 2007, No. 404, § 4; 2019, No. 910, §§ 6033-6035.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" twice in (a)(1)(A); and substituted "division" for "department" throughout the section.

## **24-6-406. Benefits generally.**

(a)(1) Upon retirement as provided in this subchapter, a member shall receive a straight life pension equal to two and sixty-five-hundredths percent (2.65%) of the member's final average compensation multiplied by the number of years and any fraction of a year of his or her service.

(2)(A) In addition, if a member has service resulting from employment in a position covered at any time by Social Security or another federal retirement plan supported wholly or in part by employer contributions, and if that member's age at retirement is younger than:

(i) Social Security's minimum age for an immediate retirement benefit; and

(ii) Age sixty-two (62),

then the member shall receive a temporary annuity equal to five hundred thirteen thousandths percent (0.513%) of the member's final average compensation for each year of his or her actual service.

(B) The temporary annuity shall terminate at the end of the calendar month in which the earliest of the following events occurs:

(i) The member's death;

(ii) The member's attainment of the Social Security minimum age; or

(iii) The member's attainment of age sixty-two (62).

(b) In the event a member with five (5) years or more of actual service in the State Police Retirement System ceases to be employed as a state police officer prior to reaching fifty-five (55) years of age and does not withdraw his or her accumulated employee contributions to the system, the member shall be entitled to receive a pension upon reaching what the member's voluntary retirement age would have been if he or she had continued state police employment from the time of termination of employment.

(c) Any member may elect to withdraw his or her accumulated contributions to the system at the time of terminating employment as a state police officer and to waive any pension rights the member may have earned in the system.

(d) It is considered sound public policy that retirement pay not exceed working pay except for increases after retirement caused by

inflation. Accordingly, at the time of retirement, the total of named-plan annuities shall not exceed the member's final average compensation.

(e) No provision of this section shall be applicable to service that is credited at a rate other than one (1) month for each month of employment.

**History.** Acts 1997, No. 1071, § 1; substituted "two and sixty-five-hundredths percent (2.65%)" for "two and four hundred seventy-five thousandths percent (2.475%)" in (a)(1).  
1999, No. 387, § 5; 2001, No. 151, § 66;  
2021, No. 415, § 7.

**Amendments.** The 2021 amendment

### 24-6-411. Benefit provisions — Death.

(a) If an active member with five (5) or more years of actual service, including service for the year immediately preceding his or her death, dies in employer service before retirement, the applicable benefit provided in this section shall be paid upon written application to the Board of Trustees of the State Police Retirement System.

(b)(1)(A) In the event that a member dies and is not being paid on that date by his or her employer due solely to illness incurred before he or she left the payroll and the death occurs within one (1) year of the last payroll, the member shall be considered, for purposes of this section, to have died as an active member if all other necessary provisions of this section are met.

(B) For purposes of computing benefits provided by this section, the deceased member's salary at the time of death shall be his or her salary for the year immediately preceding the cessation of his or her pay.

(2)(A) If an active member with five (5) or more years of actual service does not have credited service for the year immediately preceding death due to illness which eventually leads to his or her death or due to his or her employer's removing the member from the payroll because of temporary economic conditions of the employer or weather conditions, the active member shall be considered, only for eligibility purposes of the section, to have credited service for the year preceding death.

(B) Benefits shall be paid according to the salary earned during the year preceding death.

(c)(1) The member's surviving spouse who was married to the member for at least six (6) months immediately preceding the member's death shall receive an annuity computed in the same manner in all respects as if the member had retired on the date of his or her death with entitlement to an annuity provided for in § 24-6-406, elected the Option B75 survivor annuity provided for in § 24-6-408, and nominated his or her spouse as joint beneficiary.

(2)(A) If the member has satisfied the age and service requirement provided for in § 24-6-404 or had acquired twenty (20) years' actual service, then the spouse annuity shall commence immediately and be payable for his or her life.



(B) If the member had acquired fifteen (15) years' actual service, but had not attained age sixty-five (65), the spouse annuity shall commence at the later of either age fifty (50) or his or her age at his or her death and shall be payable until the earlier of his or her remarriage or death. Otherwise, the spouse annuity shall commence at the later of either age sixty-two (62) or his or her age at his or her death and shall be payable until the earlier of either his or her remarriage or death.

(3) The spouse annuity shall not be less than ten percent (10%) of the deceased member's covered compensation at the time of death.

(4) In any event, as long as the surviving spouse has in his or her care any of the deceased member's dependent children receiving a benefit provided for in this section, there shall be payable to him or her a spouse annuity which shall not be less than ten percent (10%) of the deceased member's compensation at the time of death.

(d)(1) The member's dependent child or dependent children shall each receive an annuity of the greater of either ten percent (10%) of the member's covered compensation at the time of death or an equal share of one hundred fifty dollars (\$150) monthly.

(2) If there are three (3) or more dependent children, each dependent child shall receive as an annuity an equal share of the greater of either twenty-five percent (25%) of the member's covered compensation or one hundred fifty dollars (\$150) monthly.

(3)(A) A child shall be a dependent child until his or her death, his or her marriage, or his or her attainment of age eighteen (18), whichever occurs first.

(B)(i) However, the age-eighteen maximum shall be extended as long as the child continues uninterruptedly being a full-time student at an accredited secondary school, college, or university but in no event beyond his or her attainment of age twenty-three (23).

(ii) The age-eighteen maximum shall also be extended for any child who has been deemed physically or mentally incompetent by an Arkansas court of competent jurisdiction or by the board for as long as the incompetency exists.

(4) Upon a child's ceasing to be a dependent child, his or her annuity shall terminate, and there shall be a redetermination of the amounts payable to any remaining dependent children.

(e) If at the time of the member's death there is neither a spouse nor a dependent child, each dependent parent shall receive an allowance of the greater of either ten percent (10%) of the member's covered compensation or an equal share of one hundred fifty dollars (\$150) monthly, but only if the board finds that the parent was dependent for at least fifty percent (50%) of his or her financial support upon the member.

(f)(1) If no annuity can become payable to a dependent child due to the death of the member, and a surviving spouse or dependent parents are the only persons who will be eligible for monthly benefits and the spouse or dependent parents are also the designated beneficiaries of the

member, then, in that event, the surviving spouse or dependent parent may elect to receive a refund of the member's accumulated contributions in lieu of any benefits which could become payable under this subchapter.

(2) The option to choose a refund of the member's contribution shall also be afforded to any spouse or dependent parent qualified under this section whose eligibility for the benefit occurred before the passage of this chapter and who could not exercise that option.

(3) Once the refund of the deceased member's accumulated contributions has been made to the surviving spouse or dependent parents under this subsection, the recipient shall have no future claim to monthly retirement benefits due to the death of the member.

(g)(1) In the event all the annuities provided for in this section payable on account of the death of a member terminate before there has been paid an aggregate amount equal to his or her accumulated contributions standing to his or her credit in the member's deposit account at the time of his or her death, the difference between the accumulated contributions and the aggregate amount of annuity payments shall be paid to such person as he or she shall have nominated by written designation duly executed and filed with the board.

(2) If there is no designated person surviving a termination, the difference shall be paid to the member's estate.

(h)(1) In the case of a surviving spouse of a deceased member who had benefits terminated due to remarriage under the provisions of this section, the surviving spouse of the member shall be entitled to a reinstatement of benefits upon the death of any subsequent spouse.

(2) The benefits shall cease immediately upon the death or remarriage of the surviving spouse.

(i)(1) If the member is killed while in the official line of duty and the surviving spouse is eligible for a deferred benefit under this section, the surviving spouse may elect to receive a reduced benefit beginning immediately.

(2) The reduction of the benefit otherwise defined in this section shall be:

(A) Five-tenths of one percent (0.5%) per month for each of the first sixty (60) months that the benefit begins before it would have otherwise begun; plus

(B) Twenty-five hundredths of one percent (0.25%) per month for each month more than sixty (60) months that the benefit begins before it would have otherwise begun.

(3) However, the total reduction under this subsection shall not be more than fifty percent (50%).

(4) Those who otherwise would have been eligible for this benefit on or after July 1, 2002, may also elect this reduced benefit prospectively.

**History.** Acts 1997, No. 1071, § 1; 1999, No. 387, § 7; 2001, No. 151, § 67; 2003, No. 1735, § 1; 2019, No. 511, § 1. **Amendments.** The 2019 amendment substituted "for at least six (6) months" for "at least the one (1) year" in (c)(1).



**Effective Dates.** Acts 2019, No. 511, § 2, provided: "Retroactivity. This act applies retroactively to January 1, 2017."

#### **24-6-412. Refund of contributions.**

(a)(1) In the event a member leaves the employ of the Division of Arkansas State Police prior to the date he or she becomes entitled to retire with a pension payable from the funds of the State Police Retirement System, he or she shall be paid, upon his or her written application filed with the Board of Trustees of the State Police Retirement System, the accumulated contributions standing to his or her credit in the member's deposit account if his or her separation from the employ of the division occurs after five (5) years from the date he or she last became a member of the system.

(2) If his or her separation from the employ of the division occurs within a period of five (5) years from and after the date he or she last became a member of the system, he or she shall be paid upon his or her written application filed with the board his or her accumulated contributions standing to his or her credit in the members' deposit account less the total interest credited to his or her individual account therein.

(b)(1) In the event a member dies and does not leave a beneficiary entitled to a pension payable from funds of the system, his or her accumulated contributions standing to his or her credit in the members' deposit account at the time of his or her death shall be paid to such persons as he or she shall have nominated by written designation duly executed and filed with the board.

(2) If there is no designated person surviving the member, his or her accumulated contributions shall be paid in accordance with the laws of descent and distribution of the State of Arkansas.

(3) The payments may be made directly to a curator, guardian, administrator, or executor authorized to receive such payments whenever the representative may be with or without the appointment of a representative in this state.

(c) Refunds of a member's contributions or accumulated contributions, as the case may be, may be made in equal installments according to the rules that the board may adopt from time to time.

**History.** Acts 1997, No. 1071, § 1; deleted "and regulations" following "rules" 2019, No. 315, § 2879. in (c).

**Amendments.** The 2019 amendment

#### **24-6-414. Maximum benefit limitation.**

(a) Notwithstanding any other provisions of this chapter, benefits paid under the provisions of this chapter shall not exceed the limitations of the Internal Revenue Code, 26 U.S.C. § 415 that are applicable to governmental retirement plans.

(b)(1) The Board of Trustees of the State Police Retirement System is hereby empowered and authorized to promulgate all necessary rules to

implement the limitations of the Internal Revenue Code, 26 U.S.C. § 415.

(2) The rules adopted by the board pursuant to this section shall be amended to reflect any changes in the content or application of the Internal Revenue Code, 26 U.S.C. § 415 enacted by the United States Congress or promulgated by the Internal Revenue Service.

**History.** Acts 1997, No. 1071, § 1; deleted “and regulations” following “rules” 2019, No. 315, § 2880. in (b)(1) and (b)(2).

**Amendments.** The 2019 amendment

## SUBCHAPTER 5 — ARKANSAS STATE POLICE OFFICERS’ TIER TWO DEFERRED RETIREMENT OPTION PLAN

### SECTION.

24-6-502. Election to participate in Arkansas State Police Officers’ Tier Two Deferred Retirement Option Plan.

### SECTION.

24-6-503. [Repealed.]

**Effective Dates.** Acts 2021, No. 280, § 3: July 1, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of law concerning the retirement plan of the State Police Retirement System, a state retirement plan created by the General Assembly for the purpose of providing retirement benefits to state police officers and administered by the Arkansas Public Employees’ Retirement System, is in need of revision and updating to maintain the retirement laws in conformance with sound public pension policy; that the State Police Retirement System operates on a fiscal year of July 1 to June 30; that having a July 1,

2021, effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide for the proper administration of the procedures in this act; that the revisions and updates are of great importance for actuarial purposes and to protect the benefits provided to members of the State Police Retirement System; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the State Police Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021.”

## 24-6-502. Election to participate in Arkansas State Police Officers’ Tier Two Deferred Retirement Option Plan.

In lieu of terminating employment and accepting a service retirement pension, a state police officer may elect to participate in the Arkansas State Police Officers’ Tier Two Deferred Retirement Option Plan and defer the receipt of benefits in accordance with this subchapter if:

(1) The state police officer:

(A) Is a member of the State Police Retirement System’s Tier Two Benefit Plan under § 24-6-401 et seq.;

(B) Has at least twenty-eight (28) years of actual service as a member of the State Police Retirement System’s Tier Two Benefit



Plan under § 24-6-401 et seq., including service credit a member earns after April 3, 1997, as a member of the plan under § 24-6-401 et seq., and the member's service credit from a reciprocal retirement system under § 24-2-401 et seq.; and

(C) Is eligible to receive a service retirement pension; and

(2) The Board of Trustees of the State Police Retirement System approves the participation in the Arkansas State Police Officers' Tier Two Deferred Retirement Option Plan.

**History.** Acts 2009, No. 1242, § 4; 2021, No. 280, § 1; 2021, No. 415, § 8.

**Amendments.** The 2021 amendment by No. 280, effective July 1, 2021, added "including service credit a member earns after April 3, 1997, as a member of the plan under § 24-6-401 et seq. and the member's service credit from a reciprocal retirement system under § 24-2-401 et seq." in (1)(B).

The 2021 amendment by No. 415, effective July 28, 2021, in (1)(B), substituted "twenty-eight (28) years" for "thirty (30) years" and added "including service credit a member earns after April 3, 1997, as a member of the plan under § 24-6-401 et seq. and the member's service credit from a reciprocal retirement system under § 24-2-401".

## 24-6-503. [Repealed.]

**Publisher's Notes.** This section, concerning a limitation on credited service and its definition, was repealed by Acts

2021, No. 280, § 2, effective July 1, 2021. The section was derived from Acts 2009, No. 1242, § 4.

## CHAPTER 7

# RETIREMENT OF EMPLOYEES OF SCHOOLS AND EDUCATIONAL INSTITUTIONS

### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS TEACHER RETIREMENT SYSTEM — GENERAL PROVISIONS.
3. ARKANSAS TEACHER RETIREMENT SYSTEM — BOARD OF TRUSTEES.
4. ARKANSAS TEACHER RETIREMENT SYSTEM — FUNDS AND MANAGEMENT OF ASSETS.
5. ARKANSAS TEACHER RETIREMENT SYSTEM — MEMBERSHIP.
6. ARKANSAS TEACHER RETIREMENT SYSTEM — CREDITED SERVICE.
7. ARKANSAS TEACHER RETIREMENT SYSTEM — BENEFITS.
8. ALTERNATE PLAN FOR STATE COLLEGES.
9. ALTERNATE PLAN FOR VOCATIONAL-TECHNICAL SCHOOLS.
13. TEACHER DEFERRED RETIREMENT OPTION PLAN.
15. RETIRANTS' AD HOC INCREASE ACT.
16. ARKANSAS TEACHER RETIREMENT SYSTEM — OPTIONAL PARTICIPATION BY EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION.

**A.C.R.C. Notes.** Acts 2019, No. 910, § 6341, provided: "Effect of transfer on retirement system membership and health insurance plan participation.

"(a) As used in this section, 'retirement system' means:

"(1) The Arkansas Teacher Retirement System, established by the Arkansas

Teacher Retirement System Act, § 24-7-201 et seq;

"(2) The Arkansas State Highway Employees' Retirement System, established by § 24-5-103;

"(3) The Arkansas Public Employees' Retirement System, established by § 24-4-103;

“(4) The State Police Retirement System, established by § 24-6-203;

“(5) The Arkansas Judicial Retirement System, established by § 24-8-201 et seq.;

“(6) An alternate retirement plan for:

“(A) A college, university, or the Department of Higher Education provided for under § 24-7-801 et seq.; and

“(B) A vocational-technical school or the Department of Career Education provided for under § 24-7-901 et seq.;

“(7) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.; and

“(8) A firemen’s relief and pension fund or a policemen’s pension and relief fund provided for under § 24-11-101 et seq.

“(b) If this act results in an employee who is a current member of a retirement system prior to the effective date of this act being transferred to or affiliated with a cabinet-level department that is covered by a different retirement system than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act by written election and notice to the new employer and affected retirement system, make a one-time choice to:

“(1) Remain in his or her same retirement system prior to the effective date of this act, under the same conditions then provided by law or as may later be provided by law; or

“(2) Become a member of the retirement system of the cabinet-level department to which the employee is transferred

to or affiliated with under this act, under the same conditions for a reciprocal member to be transferred as an active member to a reciprocal system as currently provided by law under the system to which the reciprocal member is transferred.

“(c) If this act results in an employee being transferred to or affiliated with a cabinet-level department that is covered by a different health insurance plan than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act, make a one-time choice between:

“(1) Continuing to participate in his or her health insurance plan prior to the effective date of this act, under the same conditions then provided by law or as may later be provided by law; or

“(2) Participating in the health insurance plan of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions then provided by law or as may later be provided by law.

“(d)(1)(A) A retirement system may issue policies establishing the procedure for an employee to exercise benefit options under subsection (b) of this section.

“(B) The State and Public School Life and Health Insurance Board may issue policies establishing the procedure for an employee to exercise benefit options under subsection (c) of this section.

“(2) A policy under subdivision (d)(1) of this section is not a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.”

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

24-7-101. Special allowances to encourage early retirement.

24-7-102. Management of early retirement window incentives.

24-7-103. Payment of employer contribution rate.

### SECTION.

24-7-104. Employer early retirement incentives.

24-7-105. Socially responsible investments.

**Effective Dates.** Acts 2017, No. 503, § 2: Mar. 15, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the

Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and



updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system.

Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### **24-7-101. Special allowances to encourage early retirement.**

(a) In order to effect a net savings in personnel costs paid by colleges and universities, the presidents and chancellors of the various publicly supported colleges and universities may, upon the approval of their respective boards of trustees, negotiate with tenured faculty members of their institutions so that, in order to secure the faculty members' early retirement, special allowances may be paid to them or into retirement plans for their benefit.

(b) The board of trustees of each institution is authorized to pay such allowances as the board may approve from any appropriation provided for regular salaries for the benefit of its institution and from any source of funds available to its institution.

(c) The amount of all such allowances for any institution shall not exceed, in the aggregate during any fiscal year, an amount equal to five percent (5%) of the aggregate paid for personnel costs during the preceding fiscal year for the institution.

(d) The board of trustees of each institution shall report the exact disposition of the special allowances to the Legislative Joint Auditing Committee each year.

**History.** Acts 1983, No. 271, § 8; A.S.A. substituted "five percent (5%)" for "one percent (1%)" in (c).  
1947, § 80-1465; Acts 2021, No. 425, § 1.

**Amendments.** The 2021 amendment

### **24-7-102. Management of early retirement window incentives.**

(a) The purpose of this section is to create incentives for the efficient management of the public higher education resources of the State of Arkansas by allowing public higher education institutions to establish early retirement window incentives for qualified nontenured faculty and staff who elect voluntary separation from the institution.

(b) The boards of trustees of the publicly supported institutions of higher education may provide special allowances for nontenured faculty and staff to effect a saving in personnel salaries and fringe benefits costs when it is determined by the boards that such saving will provide for more efficient operation of the institutions.

(c)(1) The boards of trustees shall approve criteria to determine qualifications to be met by the institutions and the employee.

(2) Such qualifications shall include, but are not limited to:

(A) Assurance that participation is strictly voluntary for employees;

(B) Only full-time employees who are at least fifty-five (55) years of age or meet the retirement requirements for the Civil Service Retirement System; and

(C) A savings in personnel cost will be realized by the institution.

(d) The amount of all such allowances for any institution shall not exceed, in the aggregate during any fiscal year, an amount equal to five percent (5%) of the aggregate paid for personnel costs during the preceding fiscal year for the institution.

(e) The boards of trustees are authorized to pay such allowances from any appropriation provided for regular salaries for the benefit of their institutions and from any sources of funds available to the institutions.

(f) The board of trustees of each institution shall report the exact disposition of the special allowance to the Legislative Joint Auditing Committee by July 1 of each year.

**History.** Acts 1995, No. 296, §§ 1-5; substituted “five percent (5%)” for “one percent (1%)” in (d).  
2021, No. 425, § 2.

**Amendments.** The 2021 amendment

### **24-7-103. Payment of employer contribution rate.**

Local school districts shall pay the teacher retirement employer contribution rate for any eligible employee in accordance with rules established by the Board of Trustees of the Arkansas Teacher Retirement System.

**History.** Acts 1995, No. 1194, § 13; deleted “and regulations” following 2019, No. 315, § 2881.  
“rules”.

**Amendments.** The 2019 amendment

### **CASE NOTES**

#### **Settlement Proceeds.**

Substantial evidence supported the finding that a school district was responsible for paying the employer contribution to the Arkansas Teacher Retirement System (ATRS) on settlement proceeds a teacher received and that a school district failed to follow the calculation of damages

designated in the settlement as back pay because a 14% employer contribution had to be paid on all salary, and ATRS could treat as salary any remuneration paid to a member for settlement with an employer. *Palestine-Wheatley Sch. Dist. v. Hopkins*, 2016 Ark. App. 112, 484 S.W.3d 682 (2016).

### **24-7-104. Employer early retirement incentives.**

An employer’s offer to encourage an employee to terminate his or her employment with the employer shall not include a requirement that the



employee file an application for retirement with the Arkansas Teacher Retirement System.

**History.** Acts 2017, No. 503, § 1.

## 24-7-105. Socially responsible investments.

A decision on whether to invest, not invest, or withdraw from investment the funds of the Arkansas Teacher Retirement System or an alternate retirement plan of the system shall not be based on a consideration that the location of the investment, fund, company, or any other type of investment vehicle is in the State of Israel.

**History.** Acts 2017, No. 767, § 1.

## SUBCHAPTER 2 — ARKANSAS TEACHER RETIREMENT SYSTEM — GENERAL PROVISIONS

### SECTION.

24-7-202. Definitions.

24-7-205. Correction of errors.

24-7-207. Increase in benefit amount.

### SECTION.

24-7-208. Benefit enhancements — Restrictions.

24-7-210. Federal taxation.

**Effective Dates.** Acts 2015, No. 301, § 11: Mar. 4, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of clarification to operate the system efficiently and effectively; that such clarification is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 241, § 2: Feb. 21, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that an error in the records of the Arkansas Teacher Retirement System concerning a member's service credit may be detrimental to a member; that the ability to correct certain types of errors within the Arkansas Teacher Retirement System provides justice to a member; and that this act is immediately necessary to provide a remedy to a member of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 293, § 9: Feb. 28, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Teacher Retirement

System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 436, § 4: Mar. 9, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The

date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 427, § 23: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions of this act to begin on the first day of the fiscal year and to provide for the proper administration of the Arkansas Teacher Retirement System; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is



declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 190, § 5: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are in urgent need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; that reporting errors have resulted in harm to the members of the system; that the reporting errors caused members to not receive service credit that the members had earned; that the members are not at fault for the harm caused by the reporting errors; that the option of purchasing earned service credit at actuarial cost would be an excessive burden for the members; that this act is necessary to establish a fairer remedy for the harm caused to the members than the current law provides; that a July 1, 2021 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures referenced in this act; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 279, § 38: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher

Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 290, § 3: Sept. 1, 2021.

Acts 2021, No. 427, § 7: Mar. 23, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of § 24-7-201 et seq. are in need of immediate revision and updating to conform with sound public pension policy and actuarial requirements; that there are conflicts in the law applicable to the Arkansas Teacher Retirement System concerning reciprocal service in alternate retirement plans; that member benefits will be at risk if the conflicts in the law concerning reciprocal service in alternate retirement plans remain unresolved; that this act resolves the conflicts in the law concerning reciprocal service in alternate retirement plans; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of this state; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System and reciprocal systems. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the pub-

lic peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## 24-7-202. Definitions.

As used in this act:

(1) "Accumulated contributions" means the total of all amounts contributed by a member credited to the member's deposit account, together with regular interest;

(2) "Active member" means any member eligible for service credit rendering service to an employer that is covered by the Arkansas Teacher Retirement System;

(3) "Actual service" means service rendered in a position covered by the Arkansas Teacher Retirement System and does not include purchased or free credited service or reciprocal service;

(4) "Actuarial equivalent" means a benefit of equal reserve value when reserve is the present value of all payment to be made on account of any benefit based upon such reasonable rate of interest and table of experience as a plan shall adopt from time to time;

(5) "Administrator" means:

(A) A person who is:

(i) Employed by an education-related agency that participates in the Arkansas Teacher Retirement System; and

(ii) An active member employed in a position that is a grade GS13, a grade above a GS13, or the equivalent of a grade GS13; or

(B) A person who is:

(i) Employed by an employer of the Arkansas Teacher Retirement System; and

(ii) Any one (1) of the following:

(a) A public school superintendent, assistant superintendent, principal, or vice principal;

(b) A president, chancellor, or a director of an institution of higher education; or

(c) A president, vice president, or a director of a community college vocational, technical, or educational cooperative;

(6) "Alternate retirement plan" means a retirement plan based on the purchase of contracts providing retirement and death benefits for employees under § 24-7-801 et seq. or § 24-7-901 et seq.;

(7) "Annuity" means an amount payable to a retirant each fiscal year by the Arkansas Teacher Retirement System in equal monthly installments;

(8) "Arkansas Teacher Retirement System" means a governmental state agency created in 1973 and administered under Acts 1973, No. 427, as amended, to provide a system of retirement benefits to its members and includes a limited liability company or other corporate entity solely owned by the system;



(9) "Beneficiary" means any person who is receiving or is designated by a member to receive an Arkansas Teacher Retirement System benefit;

(10)(A) "Benefit participant" means a person or entity that receives or may receive any kind of benefit, annuity, or other payment from the system due to a member's participation in the system.

(B) "Benefit participant" includes without limitation:

(i) A member;

(ii) A spouse or a member;

(iii) A survivor;

(iv) A residual beneficiary;

(v) A death beneficiary;

(vi) A former spouse of a member; and

(vii) The estate of a member;

(11) "Benefit program" means a schedule of benefits or benefit formulas from which the amounts of Arkansas Teacher Retirement System benefits can be determined;

(12) "Board" means the Board of Trustees of the Arkansas Teacher Retirement System;

(13) "Child of a member" means either a natural child of the member or a child who has been made a child of the member by applicable court action before the death of the member;

(14) "Credited service" means service which is creditable as service by the Arkansas Teacher Retirement System;

(15) "Deferred member" means an inactive member who is eligible to receive benefits under § 24-7-707;

(16) "De minimis amount" means an amount of money so small as to make accounting for it unreasonable or impractical;

(17)(A) "Employee" means any person employed by an employer covered by the Arkansas Teacher Retirement System.

(B)(i) "Employee" does not include a participant in a summer work program whose compensation is disbursed by a covered employer through an agreement with an administrator of a summer work program to serve as a pass-through fiscal agent if the participant is:

(a) Enrolled in a secondary public school as a student;

(b) Employed for a period between the first day of June and the last day of August; and

(c) Participating in a program in which the covered employer is acting as a pass-through fiscal agent.

(ii) The board shall promulgate rules for the implementation of subdivision (17)(B)(i) of this section;

(18) "Employer" or "covered employer" means any public school, public educational agency, or other eligible employer participating in the Arkansas Teacher Retirement System unless the context clearly indicates that the employer is not a covered employer;

(19) "Employment with a school" means, beginning July 1, 1993:

(A) Employment with any of the following institutions or agencies:

(i) Arkansas School for the Blind;

- (ii) Arkansas School for the Deaf;
- (iii) Arkansas Activities Association;
- (iv) State Board of Education;
- (v) Regional education service cooperatives; and
- (vi) Arkansas Teacher Retirement System;

(B) Employment in a position with any of the following organizations:

- (i) The Arkansas Educational Television Commission; and
- (ii) Area vocational-technical schools, except those employees of area vocational schools and the Division of Career and Technical Education, the Adult Education Section, and the Office of Skills Development, who have elected to participate in an alternate retirement plan established by §§ 24-7-901 and 24-7-903 — 24-7-908;

(C) Employment by Arkansas Rehabilitation Services except those employees who have elected to participate in the Arkansas Public Employees' Retirement System;

(D)(i) Employment in a position with an education-related agency or organization if the employee is or has been a member of the Arkansas Teacher Retirement System for a minimum of five (5) years and elects to become or remain a member of the Arkansas Teacher Retirement System. The employment shall be related to:

- (a) Training public school employees or school board members;
  - (b) Teaching public school students; or
  - (c) Adult education programs.
- (ii) The employment shall not be related in any manner to private schools.
- (iii) Each education-related agency or organization shall be:
- (a) Approved according to rules established by the board;
  - (b) Considered an employer under subdivision (18) of this section;
- and

- (c) Responsible for all required employer contributions;

(E)(i) Employment in an enterprise privatized by a public school district.

(ii) If a public school district should privatize any of its services, any individual who is or was employed by the school district in one (1) of those services and who is or has been a member of the Arkansas Teacher Retirement System may elect to remain a member if:

(a) The board determines pursuant to rules adopted by the board that the participation of these employees in the Arkansas Teacher Retirement System will not in any way impair any legal status of the Arkansas Teacher Retirement System, including without limitation its status as a governmental plan pursuant to the Internal Revenue Code and the Employee Retirement Income Security Act of 1974, or have a substantial adverse impact on the actuarial soundness of the Arkansas Teacher Retirement System; and

(b) The private provider assumes all responsibility for the required employer contributions and any fees for obtaining Internal Revenue Service rulings or Employee Retirement Income Security Act of 1974 opinions;



(F)(i) Employment in positions with an educational nonprofit corporation licensed and regulated by the Division of Developmental Disabilities Services of the Department of Human Services, if:

(a) The nonprofit corporation has elected to participate in the Arkansas Teacher Retirement System; and

(b) The board determines pursuant to rules adopted by the board that the participation of the educational nonprofit corporation will not in any way impair any legal status of the Arkansas Teacher Retirement System, including without limitation its status as a governmental plan pursuant to the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974, or have a substantial adverse impact on the actuarial soundness of the Arkansas Teacher Retirement System.

(ii) The employment shall be related to:

(a) Training public school employees or school board members;

(b) Teaching public school students; or

(c) Adult education programs.

(iii) The employment shall not be related in any manner to private schools.

(iv) Each educational nonprofit corporation shall be:

(a) Approved according to rules established by the board;

(b) Considered an employer under subdivision (18) of this section; and

(c) Responsible for all required employer contributions and any fees for obtaining Internal Revenue Service rulings or Employee Retirement Income Security Act of 1974 opinions; and

(G) Employment with a covered employer that elects to treat embedded employees of a contractor as members of the system;

(20) "Final average salary" means the average of the highest salaries earned by a member in state fiscal years determined in accordance with the rules of the board as is actuarially appropriate for the Arkansas Teacher Retirement System;

(21) "Inactive member" means a formerly active member who is:

(A) No longer rendering service that is covered by the Arkansas Teacher Retirement System; and

(B) Not a retirant;

(22) "Interest" means the rate or rates per annum, compounded annually, as the board shall adopt from time to time, that will be charged for the purchase of service credit or to repay a refund, or repayment of benefits, but the rate shall equal no less than the Arkansas Teacher Retirement System's current assumed interest rate assumption;

(23) "Internal Revenue Code" means the Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq., as amended, as it existed on January 1, 2013;

(24) "Look-back period" means a period of time that includes the current fiscal year and the four (4) fiscal years immediately preceding the current fiscal year;

(25)(A) "Manifest injustice" means an obvious unfairness that has a direct and observable unconscionable effect that will occur as a result of a technical error or error of judgment, when the error made by the system, a benefit participant, or employer, and the disparity of outcome to the parties, when taken together and supported by clear and convincing evidence, show a great harm to the integrity of the system as a whole, the benefit participant, or an employer, unless the system is afforded the discretion to resolve the matter in a fair manner.

(B) In determining manifest injustice the system may consider:

(i) The degree of fault of the system, benefit participant, or employer;

(ii) An ambiguity in the interpretation of the circumstances, rule, or law;

(iii) The cost to the system of correcting the error that is far outweighed by the benefit afforded to the system, benefit participant, or employer;

(iv) Whether or not an expedited decision is in the public interest;

(v) The fundamental fairness of a remedy in a particular situation; and

(vi) Whether or not the status quo would result in an unconscionable outcome;

(26) "Member" means any person included in the membership of the Arkansas Teacher Retirement System;

(27) "Nonteacher" means a member who is not a teacher or an administrator;

(28) "Normal retirement age" means:

(A) Sixty-five (65) years of age if the member has at least five (5) years of actual service; or

(B) At least sixty (60) years of age if the member has a combined total of thirty-eight (38) years or more of credited service in the Arkansas Teacher Retirement System, Teacher Deferred Retirement Option Plan, or reciprocal service in another eligible state retirement system;

(29) "Normal retirement age" means sixty-five (65) years of age;

(30) "Reciprocal service" means credited service rendered under a reciprocal system as defined by § 24-2-401;

(31) "Regular interest" means the rate or rates per annum, compounded annually, which the board shall adopt from time to time, that will be used to compute interest on members' contributions;

(32) "Reserve" means the present value of all payments to be made on account of any Arkansas Teacher Retirement System benefit based upon such reasonable tables of experience and regular interest as the board shall adopt from time to time;

(33) "Retiree" or "retirant" means a member receiving an Arkansas Teacher Retirement System annuity;

(34) "Retires" means that a member ceases to be active and is eligible to receive retirement benefits from the Arkansas Teacher Retirement System;



(35)(A) "Salary" means the remuneration paid to a member employed in a position covered by the Arkansas Teacher Retirement System on which the employer is required to withhold federal income tax from wages or on which income tax would be due under the Internal Revenue Code.

(B) "Salary" includes:

(i) An incentive bonus paid to an employee for the employee's certification by the National Board for Professional Teaching Standards under § 6-17-413 if the Department of Education pays the employer contribution and the member pays the required member contribution; and

(ii) Employer pick-up contributions, cafeteria plans as defined in § 21-5-901, and employee contributions to qualified retirement plans, including without limitation qualified annuities and deferred compensation plans.

(C) "Salary" does not include:

(i) All or part of a payment made as a result of a contract buyout agreement, settlement, claim, judgment, arbitration award, decree, or court-ordered payment to a member; and

(ii) Nonmonetary taxable income, including without limitation vehicles, housing, and personal property.

(D) The board may promulgate rules to modify the definition of salary used in the calculation of benefits by the system;

(36) "School" means any public school under the control of school authorities of the state and supported wholly or partially by state moneys;

(37) "Service" means employment rendered as an employee;

(38)(A) "Service purchase account" means an account established by a member with the Arkansas Teacher Retirement System to allow the member to buy service credit in the system as allowed under this subchapter.

(B) "Service purchase account" does not include an account established by the system to allow a member to make payments on unreported or incorrectly reported contributory service credit that is not resolved through a release process;

(39) "Social Security" means the Social Security, old age, survivors', and disability insurance program;

(40) "State" means the State of Arkansas;

(41) "System" means the Arkansas Teacher Retirement System;

(42) "T-DROP" means the Teacher or rates Deferred Retirement Option Plan established by the Arkansas Teacher Retirement System;

(43) "T-DROP plan interest" means the rate or rates per annum that the board shall adopt from time to time that will be used to compute interest paid on T-DROP mean balances at the end of each fiscal year;

(44)(A) "Teacher" means, beginning July 1, 1989, any person employed by a school for the purpose of giving instructions and whose employment requires state licensure.

(B) In any case of a question as to who is a teacher, the board shall have the final power to decide the question; and

(45) “Trustee” means a member of the board.

**History.** Acts 1973, No. 427, § 2; 1983, No. 619, § 1; 1983, No. 665, § 1; 1985, No. 805, § 1; A.S.A. 1947, § 80-1437; Acts 1989, No. 652, § 1; 1989, No. 653, § 1; 1993, No. 435, § 1; 1993, No. 897, § 1; 1995, No. 460, § 1; 1995, No. 542, § 1; 1995, No. 638, §§ 1, 2; 1997, No. 142, § 1; 1997, No. 1064, § 1; 1997, No. 1137, § 3; 1999, No. 11, § 1; 1999, No. 865, § 3; 2001, No. 155, § 1; 2001, No. 461, § 1; 2005, No. 71, § 1; 2005, No. 146, § 2; 2005, No. 2190, § 23; 2007, No. 97, § 1; 2007, No. 617, § 44; 2009, No. 468, § 1; 2009, No. 1325, § 1; 2009, No. 1326, § 2; 2011, No. 45, § 1; 2011, No. 69, §§ 3, 4; 2011, No. 138, § 1; 2011, No. 163, § 1; 2011, No. 225, § 1; 2013, No. 140, §§ 1, 2; 2013, No. 303, § 1; 2013, No. 521, § 1; 2015, No. 301, § 1; 2017, No. 293, §§ 1, 2; 2017, No. 436, §§ 1, 2; 2017, No. 575, § 1; 2019, No. 315, §§ 2882, 2883; 2019, No. 427, §§ 2-5; 2019, No. 910, §§ 2369, 2370; 2021, No. 279, §§ 1-4; 2021, No. 290, § 1; 2021, No. 427, § 1; 2021, No. 691, § 1.

**Amendments.** The 2017 amendment by No. 293, in the definition for “Arkansas Teacher Retirement System”, inserted “governmental” and added “and includes a limited liability company or other corporate entity solely owned by the system”; and, in the definition for “Employer”, inserted “or ‘covered employer’” and added “unless the context clearly indicates that the employer is not a covered employer”.

The 2017 amendment by No. 436 inserted “or on which income tax would be due” in present (33)(A); and deleted “on which the employer is required to withhold federal income tax from wages unless the amount paid to the member is higher than the wages earned by the member for regular service” from the end of present (33)(C)(i).

The 2017 amendment by No. 575 added present (18)(G).

The 2019 amendment by No. 315 deleted “and regulations” following “rules” in present (18)(D)(iii)(a) and present (19).

The 2019 amendment by No. 427 added the definition for “Administrator”; rewrote present (19); added “Retiree” to the defined term “Retirant”; and made stylistic changes.

The 2019 amendment by No. 910 substituted “Division of Career and Technical Education, Adult Education Section of the Division of Workforce Services, and the Office of Skills Development” for “Department of Career Education” in present (18)(B)(ii) and substituted “Division of Workforce Services” for “Department of Career Education” following “Arkansas Rehabilitation Services of the” in present (18)(C).

The 2021 amendment by No. 279 substituted “an employer” for “a participating employer” in (5)(B)(i); in the definition for “Employment with a school”, substituted “education-related agency or organization” for “educationally related agency” in the introductory language of both (D)(i) and (iii); added “or an administrator” in the definition for “nonteacher”; and inserted “or rates” in the definition for “T-DROP plan interest”.

The 2021 amendment by No. 290, in the definition for “Normal retirement age”, added “if the member has at least five (5) years of actual service: or” in (A) and added (B); and made stylistic changes.

The 2021 amendment by No. 427 added the definition for “Alternate retirement plan”.

The 2021 amendment by No. 691 in the definition for “Employee” added (B) and made stylistic changes.

**Effective Dates.** Acts 2021, No. 290, § 3: Sept. 1, 2021.

## CASE NOTES

### Settlement Proceeds.

Substantial evidence supported the finding that a school district was responsible for paying the employer contribution to the Arkansas Teacher Retirement System (ATRS) on settlement proceeds a teacher received and that a school district failed to follow the calculation of damages

designated in the settlement as back pay because a 14% employer contribution had to be paid on all salary, and ATRS could treat as salary any remuneration paid to a member for settlement with an employer. *Palestine-Wheatley Sch. Dist. v. Hopkins*, 2016 Ark. App. 112, 484 S.W.3d 682 (2016).



**24-7-205. Correction of errors.**

(a)(1) If a change, omission, or error in the records of the Arkansas Teacher Retirement System results in a benefit participant, employer, or the system having received an overpayment or underpayment of any obligation, liability, contribution, or other right to payment more or less than what would have been paid or received if the records had been correct, the system or its designee shall correct the record and, as far as practicable, shall adjust the obligation, liability, contribution, or other right to payment.

(2) A refund payable to a benefit participant shall be paid based on the corrected record.

(3) The system may withhold an amount owed to the system from a benefit participant to correct an overpayment made to the benefit participant.

(b)(1) If a benefit participant has a balance due to the system or receives any benefit or other distribution by the system to which the benefit participant is not entitled or the benefit participant or employer has an unpaid obligation to the system, the system or its designee, under rules adopted by the Board of Trustees of the Arkansas Teacher Retirement System, may:

(A) Withhold the amount due from any benefit or payment due the benefit participant;

(B) Collect the amount in any other manner provided by law; or

(C)(i) Convert contributory service credit to noncontributory service credit for the fiscal year for which there is a member contribution balance due to the system, if the member that owes the member contribution balance elects to have the system convert the contributory service credit rather than pay the balance due.

(ii) If contributory service credit is converted to noncontributory service credit under subdivision (b)(1)(C)(i) of this section, the system shall return any member contributions for the affected portion of that fiscal year without interest.

(2) Withheld amounts shall be used to effect repayment until the total amount withheld equals all amounts payable by the benefit participant to the system.

(3)(A) Before making an adjustment of benefits or pursuing any other collection action under this section, the system or its designee shall provide notice to the benefit participant or employer.

(B) The notice shall describe the process for disputing an adjustment of benefits.

(4) The board or its designee may waive adjustment or repayment due to the system, including interest, if:

(A) The error was not the result of the benefit participant's or employer's intentional nondisclosure, fraud, misrepresentation, or other fault; and

(B) The board or its designee finds in his or her or its sole discretion that recovery of the amount owed to the system will result in a manifest injustice.

(c) A determination, review, administrative action, cause of action, request to enforce, change, or modify an obligation, duty, benefit calculation, designation, refund, contribution, service credit, or other right arising under this subchapter shall not be valid unless commenced within the look-back period unless the system determines that the justification to commence the process is due to intentional nondisclosure, fraud, misrepresentation, criminal act, or an obvious or documented error by an employer or the system that understated the service credit or salary of a member.

(d) The board or its designee may make adjustments to the employer, member, and system records beyond the look-back period if the board determines that the time limitation imposed by the look-back period will result in a manifest injustice in a specific case.

(e) The board or its designee may waive or modify the impact of a rule, provision, or law that does not violate federal law or jeopardize the tax-qualified status of the system to correct or prevent a manifest injustice that would affect the system, benefit participant, or employer in a particular instance.

**History.** Acts 1973, No. 427, § 10; A.S.A. 1947, § 80-1444; Acts 2005, No. 1026, § 1; 2009, No. 465, § 1; 2009, No. 468, § 2; 2011, No. 138, § 2; 2013, No. 303, § 2; 2013, No. 336, § 1; 2017, No. 241, § 1; 2019, No. 85, § 1; 2021, No. 190, §§ 1, 2.

**Amendments.** The 2017 amendment added “or an obvious or documented error by an employer or the system that understated the service credit of a member upon which all required contributions have been paid” to the end of (c).

The 2019 amendment inserted “contributory” throughout (b)(1)(C); inserted

“member contribution” twice in (b)(1)(C)(i); inserted “portion of that” in (b)(1)(C)(ii); and deleted “Except for member contributions” from the beginning of (b)(4).

The 2021 amendment, in (b)(1)(C)(i), substituted “Convert” or “convert” for “Cancel any” or “cancel”; inserted “to noncontributory service credit”; inserted “credit” preceding “rather than”; substituted “converted to noncontributory service credit” for “canceled” in (b)(1)(C)(ii); and, in (c), inserted “or salary” and deleted “upon which all required contributions have been paid” at the end.

## 24-7-207. Increase in benefit amount.

(a) The Board of Trustees of the Arkansas Teacher Retirement System is authorized by this act to raise the level of benefits to the current retirants and other beneficiaries of the Arkansas Teacher Retirement System to a comparable level increase to match the increase in benefits that would accrue to active members as a result of any reduction of the calculation of “final average salary” to not less than a three-year period nor more than the five-year period in accordance with any rules the board might promulgate.

(b) The amount of any increase for retirants and other beneficiaries shall also be determined in accordance with the rules of the board as is actuarially appropriate for the system.



**History.** Acts 1997, No. 1137, § 4; deleted "and regulations" following "rules" 2019, No. 315, § 2884. in (a) and (b).

**Amendments.** The 2019 amendment

### 24-7-208. Benefit enhancements — Restrictions.

(a) No benefit enhancement provided for by this chapter shall be implemented if it would cause the Arkansas Teacher Retirement System's unfunded actuarial accrued liabilities to exceed an eighteen-year amortization.

(b) No benefit enhancement provided for by this chapter shall be implemented by the system if the system has unfunded actuarial accrued liabilities being amortized over a period exceeding eighteen (18) years until the unfunded actuarial accrued liability is reduced to a level less than the standards prescribed by § 24-1-101 et seq.

**History.** Acts 1997, No. 1137, § 5; The 2021 amendment substituted 2019, No. 427, § 6; 2021, No. 279, § 5. "chapter" for "act" twice in the section;

**Amendments.** The 2019 amendment substituted "an eighteen-year amortization" for "a thirty-year amortization" in (a); and substituted "eighteen (18) years" for "thirty (30) years" in (b). substituted "Arkansas Teacher Retirement System's" for "publicly supported retirement system's" in (a); and substituted "the system if the system" for "any publicly supported system which" in (b).

### 24-7-210. Federal taxation.

(a) The Executive Director of the Arkansas Teacher Retirement System is authorized and directed to operate the Arkansas Teacher Retirement System and interpret any provisions of § 24-7-101 et seq. consistent with the requirements under the Internal Revenue Code and applicable United States Department of the Treasury regulations necessary to permit the system to be operated as a "qualified trust" under Internal Revenue Code, 26 U.S.C. § 401(a).

(b) Notwithstanding any language to the contrary set forth in this chapter, the Board of Trustees of the Arkansas Teacher Retirement System shall have the authority to promulgate rules consistent with these directions.

(c) Any rule promulgated under this section that is found to be in conflict with an applicable provision of the code is null and void.

**History.** Acts 2001, No. 155, § 2; 2005, deleted "and regulations" following "rules" 2019, No. 315, § 2885. in (b); and substituted "rule" for "regulation" in (c).

**Amendments.** The 2019 amendment

## SUBCHAPTER 3 — ARKANSAS TEACHER RETIREMENT SYSTEM — BOARD OF TRUSTEES

#### SECTION.

- 24-7-301. Board of trustees — Members.  
24-7-302. Term of office and vacancies.  
24-7-303. Board of trustees — Officers — Committees.

#### SECTION.

- 24-7-305. Board of trustees — Duties and responsibilities.

**Effective Dates.** Acts 2015, No. 301, § 11: Mar. 4, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of clarification to operate the system efficiently and effectively; that such clarification is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 427, § 23: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow

the provisions of this act to begin on the first day of the fiscal year and to provide for the proper administration of the Arkansas Teacher Retirement System; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 279, § 38: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

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## 24-7-301. Board of trustees — Members.

The general administration and responsibility for the proper operation of the Arkansas Teacher Retirement System and for making effective the provisions of this act are vested in a board of trustees of fifteen (15) persons as follows:



(1) The Bank Commissioner, the Treasurer of State, the Auditor of State, and the Commissioner of Elementary and Secondary Education shall be ex officio trustees;

(2)(A) Seven (7) members shall be elected active member trustees, each of whom shall have at least five (5) years of actual service in force and be an active member. For the purpose of this section and § 24-7-302, participants in the Teacher Deferred Retirement Option Plan shall be considered active members.

(B) Four (4) active member trustees shall be employed in a position that requires state licensure, but not an administrator's license. One (1) member trustee will be elected from each of the four (4) congressional districts. The four (4) member trustees shall be elected by the members employed in positions that require state licensure, but not an administrator's license.

(C)(i) Two (2) active member trustees shall be employed in a position requiring an administrator's license, one (1) of whom shall be a superintendent or an educational cooperative director.

(ii) These two (2) active member trustees shall be elected by members employed in positions requiring an administrator's license.

(D) One (1) active member trustee shall be employed in a position not requiring state licensure. This member trustee shall be elected by members employed in positions not requiring state licensure;

(3) One (1) trustee shall be a minority, as defined under § 1-2-503, who:

(A) Is an active or retired member of the system;

(B) Is elected from the active and retired membership of the system; and

(C) Has at least five (5) years of actual service;

(4)(A) Three (3) retirants shall be elected retirant trustees by the retirees of the system.

(B) Each retirant trustee shall be a retirant with an annuity being paid by the system at the beginning of his or her term of office;

(5) The member and retirant trustees shall be elected in accordance with rules as have been adopted by the board to govern the elections; and

(6) An employee working for the system is not eligible to be:

(A) Elected or appointed to the board; or

(B) A candidate to be elected or appointed to the board.

**History.** Acts 1973, No. 427, § 3; 1983, No. 126, § 1; A.S.A. 1947, § 80-1438; Acts 1995, No. 523, § 1; 1997, No. 418, § 1; 1999, No. 866, § 1; 2007, No. 97, § 3; 2015, No. 301, § 2; 2019, No. 427, § 7; 2021, No. 279, § 6.

**Amendments.** The 2019 amendment designated the two sentences in (2)(C) as (2)(C)(i) and (ii); substituted "shall be an

administrator" for "must be a superintendent or an educational cooperative director" in (2)(C)(i); and substituted "an administrator's license" for "administrator licensure" in (2)(C)(ii).

The 2021 amendment substituted "a superintendent or an educational cooperative director" for "an administrator" in (2)(C)(i).

**24-7-302. Term of office and vacancies.**

(a)(1) The term of office of each member-elected trustee shall be six (6) years.

(2)(A)(i) An active member trustee shall be ineligible to serve after becoming inactive, retiring, or ceasing to be employed by an Arkansas Teacher Retirement System employer.

(ii) A member trustee who participates in the Teacher Deferred Retirement Option Plan is considered active for purposes of this subsection.

(B) A retirant trustee is ineligible to serve after becoming active.

(b)(1)(A) If any member trustee fails to attend three (3) consecutive regular meetings of the Board of Trustees of the Arkansas Teacher Retirement System, unless in each case excused for cause by the remaining trustees attending the meetings, the member trustee shall be considered to have resigned from the board, and the board shall by resolution declare his or her office of trustee vacated.

(B) A regular meeting of the board shall include one (1) or more days of official business to be considered by the board.

(2) If a vacancy occurs in the office of an elected trustee, the board by majority vote may fill the vacancy by:

(A) A special election; or

(B) Appointment of a trustee until the next system election.

(c) The board shall adopt its own rules pertaining to attendance and vacancies as provided in subsection (b) of this section.

**History.** Acts 1973, No. 427, § 3; 1983, 2001, No. 156, § 1; 2003, No. 196, § 1; No. 126, § 2; A.S.A. 1947, § 80-1438; Acts 2009, No. 468, § 3; 2011, No. 975, § 1; 1991, No. 43, § 1; 1997, No. 418, § 2; 2015, No. 301, § 3.

**24-7-303. Board of trustees — Officers — Committees.**

(a) The Board of Trustees of the Arkansas Teacher Retirement System shall select from its own number a chair and a vice chair.

(b)(1) The trustees shall serve as trustees without compensation for their services as such, except that:

(A) Each trustee may receive expense reimbursement in accordance with § 25-16-901 et seq.; and

(B) The Arkansas Teacher Retirement System shall reimburse a trustee for reasonable expenses incurred in the performance of his or her duties as trustee, including without limitation, the cost of:

(i) A substitute teacher for a trustee; and

(ii) Communication services required for paperless board meetings.

(2) Trustees are authorized to attend all system committee meetings, board meetings, and other official system functions without negative impact on his or her employment status.

(c) The board shall appoint the Executive Director of the Arkansas Teacher Retirement System, and he or she shall serve as its chief executive officer. He or she shall perform, or cause to be performed, such



duties as are required of him or her under this act and as the board shall delegate to him or her.

(d) The board shall appoint an actuary or a firm of actuaries to be technical advisor to the board on matters regarding the operation of the system on an actuarial basis. The actuary shall perform such duties as are required of him or her under this act and as are required of him or her by the board from time to time.

(e)(1) The board shall appoint a professional investment counsel to be investment advisor to the board.

(2)(A) No investment shall be made by the board until it has received the advice of its investment advisor.

(B) However, if the contemplated investment involves anything other than financial assets, as defined in § 4-8-102(a)(9), then in lieu of seeking advice from its investment advisor, the board shall seek and receive advice from a person having recognized expertise with respect to the type of investment contemplated.

(f) The board shall appoint a medical committee consisting of three (3) physicians to review applications for disability retirement.

(g) The executive director may employ such other professional and clerical services and purchase such equipment and supplies as are required for the proper operation of the system, subject to the approval of the board.

(h)(1) The compensation of the persons engaged by the board shall be consistent with the pay plan of the state.

(2)(A) All other expenses of the board necessary for the operation of the system shall be paid at such rates and in such amounts as the board shall approve.

(B) The board may create additional committees as necessary and appropriate to fulfill the duties and responsibilities of the board under this chapter.

(i)(1) An audit committee created by the board shall perform an annual employee evaluation of an internal auditor of the system.

(2) The audit committee may:

(A) Meet in executive session, with or without the internal auditor, for the purpose of conducting, reviewing, and discussing the employee evaluation of the internal auditor; and

(B) Gather information necessary to conduct a fair review of the internal auditor.

**History.** Acts 1973, No. 427, § 3; A.S.A. 1947, § 80-1438; Acts 1997, No. 250, § 231; 1999, No. 555, § 12; 2009, No. 468, § 4; 2011, No. 975, § 2; 2017, No. 127, § 1.

**Amendments.** The 2017 amendment added (i).

## **24-7-305. Board of trustees — Duties and responsibilities.**

(a)(1) Both the contributory plan provided by this act and the noncontributory plan established by §§ 24-7-401 — 24-7-411 and

24-7-701, 24-7-702, 24-7-704 — 24-7-713, 24-7-715, and § 24-7-716 [repealed] shall be under the administration and control of the Board of Trustees of the Arkansas Teacher Retirement System as provided by § 24-7-301.

(2) It is the intent of the General Assembly that neither the composition, responsibilities, nor the authority of the board be changed as a result of §§ 24-7-401 — 24-7-411 and 24-7-701, 24-7-702, 24-7-704 — 24-7-713, 24-7-715, and § 24-7-716 [repealed].

(b)(1) The board shall promulgate rules as it deems necessary from time to time in the transaction of its business and in administering the Arkansas Teacher Retirement System.

(2) In order to fully comply with federal requirements that may affect the members or the members' benefits under this subchapter, and to limit the impact of changes in federal requirements on members or the members' benefits, the board may promulgate rules to:

(A) Establish the regular retirement age for members consistent with the provisions of the Internal Revenue Code, 26 U.S.C. § 411;

(B) Maintain the system's retirement plan tax qualification status by the United States Government to remain tax-exempt and tax-qualified under the Internal Revenue Code, 26 U.S.C. § 401(a); and

(C) Modify or eliminate a plan provision that was originally established to comply with Internal Revenue Code requirements but is no longer necessary to maintain the plan's tax-qualified status under the Internal Revenue Code, 26 U.S.C. § 1 et seq., including without limitation provisions concerning:

(i) Penalties;

(ii) Restrictions;

(iii) Time limitations; and

(iv) Other requirements that impact a member, members' benefits, or the plan.

(3) The board may adopt rules, procedures, plans, programs, and actions necessary to enable the system to pay all benefits earned by the system's members and reduce penalties or restrictions required by the Internal Revenue Service while maintaining compliance with the Internal Revenue Service.

(4) The board may adopt or amend by motion or resolution at any board meeting investment policies, investment procedures, and investment asset allocation targets that are consistent with the board's fiduciary obligations under the prudent investor rule and other obligations under this subchapter.

(5) The board may set or amend by a motion or resolution at any board meeting a de minimis amount of twenty-five dollars (\$25.00) or less concerning the system's obligation to distribute or collect payments, penalties, interest, funds, or moneys.

(6) The rulemaking authority specifically granted under this chapter shall not limit the general rulemaking authority of the board under subdivision (b)(1) of this section.

(c) The board shall adopt from time to time such reasonable mortality and other tables of experience and a rate or rates of regular interest



as shall be necessary for the actuarial requirements of the Arkansas Teacher Retirement System.

(d) The Executive Director of the Arkansas Teacher Retirement System shall keep, or cause to be kept, in convenient form such data as shall be necessary for actuarial investigations of the experiences of the system, and such data as shall be necessary for annual actuarial valuations of the system.

(e)(1) The board shall annually render a report to each employer showing the financial condition of the system as of the preceding June 30.

(2) The report shall contain, but shall not be limited to:

(A) A financial balance sheet;

(B) A statement of income and disbursements;

(C) A detailed statement of investments acquired and disposed of during the year, together with a detailed statement of the annual rates of investment income from all assets and from each type of investment;

(D) An actuarial balance sheet prepared by means of the last valuation of the system; and

(E) Such other data as the board shall deem necessary to comply with § 24-2-702.

(3) In addition to the distribution of the report provided by this subsection, it shall also be distributed to the Legislative Council and to the Governor.

(f) All records of the system shall be kept and maintained in the office of the system.

(g)(1) The board shall arrange for adequate surety bonds covering the executive director and any other custodian of the funds or investments of the board.

(2) When approved by the board, the bonds shall be deposited in the office of the Treasurer of State.

(h) The records and accounts of the system shall be audited by Arkansas Legislative Audit.

(i) The headquarters of the system shall be in Little Rock.

**History.** Acts 1973, No. 427, § 3; 1983, No. 619, § 2; 1983, No. 665, § 2; 1985, No. 504, § 1; A.S.A. 1947, § 80-1438; Acts 1993, No. 403, § 18; 2005, No. 385, § 1; 2007, No. 97, § 4; 2009, No. 745, § 2; 2013, No. 109, § 1; 2015, No. 301, §§ 4, 5; 2015, No. 1165, § 1.

**A.C.R.C. Notes.** Pursuant to Acts 2015, No. 1165, § 10, subsection (b) is set out above as amended by Acts 2015, No. 301, § 4. Subsection (b) was also amended by Acts 2015, No. 1165, § 1, to read as follows:

“(b)(1) The board shall promulgate rules as it considers necessary from time

to time in the transaction of its business and in administering the Arkansas Teacher Retirement System.

“(2) In order to fully comply with federal requirements that may affect the members or the members’ benefits under this subchapter and to limit the impact of changes in federal requirements on members or the members’ benefits, the board may promulgate rules to:

“(A) Establish the regular retirement age for members consistent with Section 411 of the Internal Revenue Code;

“(B) Maintain the system’s retirement plan tax qualification status by the federal

government to remain tax exempt and tax qualified under Section 401(a) of the Internal Revenue Code; and

“(C) Modify or eliminate a plan provision that was originally established to comply with Internal Revenue Code requirements but is no longer necessary to maintain the plan’s tax-qualified status under the Internal Revenue Code, including without limitation provisions concerning:

“(i) Penalties;

“(ii) Restrictions;

“(iii) Time limitations; and

“(iv) Other requirements that impact a member, members’ benefits, or the plan.

“(3) The board may adopt rules, procedures, plans, programs, and actions necessary to enable the system to pay all benefits earned by the system’s members and reduce penalties or restrictions required by the Internal Revenue Service while maintaining compliance with the Internal Revenue Service.”

## SUBCHAPTER 4 — ARKANSAS TEACHER RETIREMENT SYSTEM — FUNDS AND MANAGEMENT OF ASSETS

### SECTION.

24-7-401. Fund contributions — Fund rates.

24-7-406. Retirement fund assets accounts — Members’ deposit account — Contributions.

### SECTION.

24-7-410. Retirement fund assets accounts — Income-expense account.

24-7-411. Compelling payment upon delinquency of employer.

**Effective Dates.** Acts 2015, No. 301, § 11: Mar. 4, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of clarification to operate the system efficiently and effectively; that such clarification is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2017, No. 550, § 2: Mar. 21, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period



of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 821, § 2: Apr. 3, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; that the system will need to act immediately in order to adequately implement any changes authorized by this act; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 297, § 3: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Teacher Retirement System maintains a system of member records that reflect the contributory or noncontributory status of each member in the system according to the laws in effect at the time and, if an election was made, the election of a member; that numerous laws enacted over many legislative sessions have modified, amended, or repealed the laws enacted in previous sessions concerning the contributory or noncontributory status of members of the Arkansas Teacher Retirement System; that accurately keeping track of

these election options requires precise administrative recordkeeping and understanding of the laws in effect at the time a member first entered the system or was allowed to exercise a membership option; that the laws need to be simplified to reduce the risk of confusion of keeping track of these election options; and that this act is necessary because the most effective time to make changes to the retirement system is at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2019, No. 427, § 23: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions of this act to begin on the first day of the fiscal year and to provide for the proper administration of the Arkansas Teacher Retirement System; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2019, No. 594, § 2: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, a state agency created by the General Assembly for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the

teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that having a July 1, 2019, effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures herein; that such revisions and updating are of great importance for actuarial purposes and to protect the benefits to members of the Arkansas Teacher Retirement System; that the funding of employer contributions by the State of Arkansas is an integral component to the design and function of the Arkansas Teacher Retirement System; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

Acts 2021, No. 190, § 5: July 1, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are in urgent need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; that reporting errors have resulted in harm to the members of the system; that the reporting errors caused members to not receive service credit that the members had earned; that the members are not at fault for the harm caused by the reporting errors; that the option of purchasing earned service credit at actuarial cost would be an excessive burden for the members; that this act is necessary to establish a fairer remedy for the harm caused to the members than the

current law provides; that a July 1, 2021 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures referenced in this act; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021.”

Acts 2021, No. 279, § 38: July 1, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021.”

Acts 2021, No. 443, § 3: July 1, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are in need of immediate revision and updating to conform with sound public pension policy and actuarial requirements; that



the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2021 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures referenced in this act; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to

other citizens of the State of Arkansas; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System and reciprocal systems. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

## **24-7-401. Fund contributions — Fund rates.**

(a)(1) The financial objective of the Arkansas Teacher Retirement System is to establish and receive contributions that expressed as percentages of active member payroll will remain approximately level from generation to generation of Arkansas citizens.

(2) Contributions received each year shall be sufficient:

(A) To fully cover the costs of benefit commitments being made to members for their service being rendered in that year; and

(B) To make a level payment that if paid annually over a reasonable period of future years will fully cover the unfunded costs of benefit commitments for service previously rendered.

(3) If the costs of benefit commitments for service previously rendered are overfunded, the plan may deduct a level payment that if deducted annually over a reasonable period of future years will fully liquidate the overfunded portion of the costs.

(b) An actuarial valuation of the entire system shall be made at least annually by the Board of Trustees of the Arkansas Teacher Retirement System's actuary.

(c)(1) For each fiscal year, the Board of Trustees of the Arkansas Teacher Retirement System shall establish employer contribution rates for the system prospectively and for each fiscal year thereafter.

(2) The employer contribution rates shall be based on the actuary's determination of the rate required to fund the plan in accordance with the objectives stated in subsection (a) of this section.

(3) The employer contribution rates shall be the rates determined by the board based on the annual actuarial valuation.

(4) For the fiscal years ending June 30, 2008, through June 30, 2013, the employer contribution rate shall not exceed fourteen percent (14%).

(5)(A)(i) Beginning July 1, 2015, and for each fiscal year thereafter, the employer contribution rate shall not exceed fifteen percent (15%).

(ii) Until July 1, 2015, the employer contribution rate shall not exceed fourteen percent (14%).

(B)(i) For the fiscal year beginning July 1, 2018, and each fiscal year thereafter, the board may modify the employer contribution rate for future fiscal years above fourteen percent (14%) in increments of one-fourth of one percent (0.25%) per fiscal year provided that the system has a greater than eighteen-year amortization period to pay

unfunded liabilities without an employer contribution rate of more than fourteen percent (14%) limited to a maximum employer contribution rate of fifteen percent (15%).

(ii) If a report provided by the system's actuary shows that the system's amortization period to pay unfunded liabilities is eighteen (18) years or less with a fourteen-percent employer contribution rate, then the employer contribution rate shall not exceed fourteen percent (14%).

(iii)(a) An increase in the employer contribution rate shall only occur if the system implements cost savings from member benefit programs or increased member contributions, or both, measured after July 1, 2013, that equal or exceed the value of the employer contribution increase before or at the same time as an employer contribution increase.

(b) The cost savings from member benefit programs or increased member contributions, or both, shall take place or be approved before or at the same time as an employer contribution increase.

(c) The system may rely upon actuarial reports by the system's actuary to determine the relative impact of changes to member benefit programs or increased member contributions, or both, including whether the cost savings from member benefit programs or increased member contributions, or both, are equal to or exceed the value of the proposed employer contribution increase.

(d) The value of cost savings from a member benefit program or member contribution increases shall be set at the time of the initial actuarial report that establishes the estimated value and shall remain as initially set unless the member benefit program or member contribution rate has changes after the actuarial report sets value.

(d) The employer contribution rate shall be such that the amortization period for all unfunded liability shall not exceed thirty (30) years. However, under no circumstance shall the required employer contribution rate exceed the maximum percentage rate under subsection (c) of this section.

(e)(1) The board shall annually notify the employers of the employer contribution rate established by the board for the upcoming fiscal year.

(2) Local school districts shall pay the teacher retirement employment contribution for any eligible employee in accordance with rules established by the board.

(3) The Department of Education shall pay from the Public School Fund the teacher retirement employer contributions for eligible employees of employers as required by the department's appropriations act and in accordance with rules established by the board.

(4) The annual employer contributions to be paid in each year for all other employees by each employer shall be the current state contribution percent multiplied by the total covered salaries of the employer's members in the fiscal year.

(5) The employers' contributions shall be remitted to the system in such manner and form and in such frequency and shall be accompanied by such supporting data as the board shall prescribe from time to time.



(6) Timely payment of the contributions shall be a condition of continuance of participation in the system.

(7)(A) All employers shall pay the total employer contribution rate except as provided under subdivision (7)(B) of this section.

(B) A public school employer shall pay the employer contribution rate up to fourteen percent (14%), and any additional employer contribution up to fifteen percent (15%) required by a public school employer shall be paid from additional funds appropriated by the State of Arkansas for the purpose of paying Arkansas Teacher Retirement System employer contributions.

(8) An increase or decrease in an employer contribution rate shall:

(A) Apply to a complete fiscal year; and

(B) Remain in effect until modified by the board.

(9) The board may adopt a change in the employer contribution rate by resolution at any board meeting.

**History.** Acts 1973, No. 427, § 8; 1975, No. 549, § 5; 1977, No. 541, § 4; 1979, No. 681, § 2; 1981, No. 365, § 5; 1983, No. 619, § 8; 1983, No. 665, § 8; A.S.A. 1947, § 80-1442; Acts 1989, No. 472, § 1; 1991, No. 17, § 1; 1991, No. 431, § 2; 1993, No. 435, §§ 2, 3; 2005, No. 1968, § 2; 2006 (1st Ex. Sess.), No. 19, § 9; 2007, No. 403, § 2; 2009, No. 468, § 5; 2013, No. 1399, § 1; 2013, No. 1446, § 1; 2017, No. 821, § 1; 2019, No. 594, § 1; 2021, No. 279, § 7.

**Amendments.** The 2017 amendment, in (c)(5)(B)(i), substituted "2018" for "2015", "future fiscal years" for "the next fiscal year", "per fiscal year provided" for

"only if the annual report from the system's actuary provided for the previous fiscal year establishes", and "eighteen-year" for "thirty-year"; substituted "eighteen (18)" for "thirty (30)" in (c)(5)(B)(ii); and deleted (c)(5)(B)(iv).

The 2019 amendment, in (e)(7)(B), inserted "additional" and substituted "appropriated by the State of Arkansas" for "appropriated to the Department of Education".

The 2021 amendment, in (e)(1) and (3), deleted "participating" preceding "employers"; and deleted "participating" preceding the second occurrence of "employer" in (e)(4),

## **24-7-406. Retirement fund assets accounts — Members' deposit account — Contributions.**

(a)(1) The members' deposit account is the account:

(A) In which member contributions are accumulated;

(B) From which member refunds of contributions are paid; and

(C) From which transfers are made as provided in this act.

(2) Employer contributions that are paid by an employee instead of an employer shall be:

(A) Credited to the members' deposit account; and

(B) Subject to refund under the same conditions that regular member contributions are refunded.

(3) In the event survivor benefits become payable on account of the death of a member, his or her accumulated contributions standing to his or her credit in the members' deposit account shall be transferred to the survivor benefit account.

(b)(1) Except as provided otherwise in this section, the contributions of a member to the Arkansas Teacher Retirement System shall be the amounts set forth in this subsection.

(2)(A) Each member who first became a member July 1, 1971, or later shall contribute to the system six percent (6%) of his or her salary for all salary earned on or before June 30, 2013.

(B) Beginning July 1, 2013, each member who first became a member July 1, 1971, or later shall contribute to the system the percentage of his or her salary set by the Board of Trustees of the Arkansas Teacher Retirement System under subdivision (b)(8) of this section.

(3) Member contributions before July 1, 1969, shall be in accordance with provisions in force before July 1, 1969.

(4)(A) For each member who first became a member before July 1, 1971, member contributions for the period after June 30, 1969, shall be six percent (6%) of the first seven thousand eight hundred dollars (\$7,800) of his or her annual salary through June 30, 2013, unless he or she shall have elected, in accordance with rules and regulations established by the Board of Trustees of the Arkansas Teacher Retirement System, to contribute six percent (6%) of his or her full salary for the period after June 30, 1969, through June 30, 2013.

(B) Beginning July 1, 2013, each member who first became a member before July 1, 1971, shall contribute to the system the percentage of salary set by the board under subdivision (b)(8) of this section on the first seven thousand eight hundred dollars (\$7,800) of his or her annual salary unless he or she elects to contribute a percentage of his or her entire salary, in accordance with the rules established by the board.

(C) If the election is made before July 1, 1984, the member shall contribute to the system the difference between full salary member contributions and member contributions based on seven thousand eight hundred dollars (\$7,800) annual covered salary retroactive to July 1, 1969, or to the actual date of employment, whichever is later, by paying the actuarial equivalent of the member's benefits to the system.

(D) If the election is made July 1, 1984, or later, the member shall contribute to the system both the added member contributions and the added employer contributions that would have been paid to the system if the member's full salary always had been covered by paying the actuarial equivalent of the member's benefits to the system.

(E) The interest and added employer contributions shall be considered member contributions for purposes of the system. However, any former active member who returns to covered employment on or after July 1, 1995, and who elects to make contributions to the system, shall contribute on his or her full salary.

(5) Members who leave covered employment and who had annual compensation of seven thousand eight hundred dollars (\$7,800) or less shall have, upon their return to covered employment, full salary considered for purposes of the system.

(6) Contributions shall be required on all salary earned in covered employment during the fiscal year in which membership begins.



(7) The member contribution rate shall be six percent (6%) unless increased by the board.

(8)(A) Subject to the limitations under subdivision (b)(8)(D) of this section, the board may set the member contribution rate at no less than six percent (6%) and may increase the member contribution rate to maintain actuarial soundness.

(B) An increase or decrease in a member contribution rate shall:

- (i) Apply to a complete fiscal year; and
- (ii) Remain in effect until modified by the board.

(C) The board may adopt a change in the member contribution rate by resolution at any board meeting to apply to subsequent fiscal years until changed.

(D) The board shall not increase the member contribution rate unless the:

(i) System's actuary certifies to the board that the amortization period to pay the unfunded liabilities of the system exceeds eighteen (18) years; and

(ii) Board determines that an increase in the member contribution rate is prudent to maintain actuarial soundness.

(c)(1)(A) Each employer shall deduct the member contributions provided for in this section from the salary of each member on every payroll, for every payroll period, from the date of his or her entrance into the system until the member retires or terminates, and the employer shall remit the contributions to the system.

(B)(i) If the employer fails to report the required service or salary of a member and remit the contributions to the system, the system shall have the right to collect from the member and the employer the contributions due, if any, from each, together with interest beginning with the subsequent fiscal year after the contributions are due.

(ii) A member shall not be given credit for service rendered until all member contributions and interest on the unreported service are paid in full or the service is converted to noncontributory service credit under § 24-7-205(b)(1)(C).

(2) The member's contributions provided for in this section shall be made notwithstanding that the minimum salary provided by law for any member shall be thereby changed.

(3)(A) Each member shall be deemed to consent and agree to the deductions made and provided for in this section.

(B) Payment of his or her salary less the deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the member during the period covered by the payment, except as to benefits provided by the system.

(4) The members' contributions, so deducted from their salaries, shall be remitted to the system in such manner and form and into such frequency and shall be accompanied by such supporting data as the board shall prescribe from time to time.

(d)(1) In addition to the contributions deducted from the salaries of a member, as provided in this section, a member may restore contribu-

tory, noncontributory, and any other service credit forfeited in a member termination refund by paying the actuarial equivalent of the member's benefits.

(2) A member shall not be given credit for service rendered before the date the member received a refund of contributions until the member returns to the system all amounts due from the member.

(e)(1)(A) Effective July 1, 1999, an active member shall:

(i) Elect to become a contributory or noncontributory member of the system as provided for in this section; and

(ii) File a written election with the system in accordance with the rules adopted by the board.

(B)(i) The election of the member:

(a) Is irrevocable; and

(b) Shall be made on or before July 1, 2000.

(ii) If a member does not make an election, then the status of the member on June 30, 2000:

(a) Remains in effect;

(b) Is irrevocable.

(iii) The election of a member to become a contributory or noncontributory member of the system:

(a) Applies only to the future salaries of a member of the system;

(b) Does not alter the contribution requirements of a member; and

(c) Does not alter the status of member contributions that existed before the election.

(iv) An active member who has previous noncontributory credited service may change credited service on which a member contribution has not been paid to contributory credited service by paying the system the actuarial equivalent of the member benefits.

(v) If a member previously made contributions to only the first seven thousand eight hundred dollars (\$7,800) of his or her annual salary, then the member cannot contribute on a full future salary until the member makes additional contributions to previous full salaries as provided under this section.

(C)(i) From July 1, 2005, to July 1, 2021, an active member whose status later changes from a nonteacher status to an administrator or teacher status under contract for one hundred eighty-one (181) days or more shall become a contributory member of the system otherwise provided for in this section regardless of an earlier election to be a noncontributory member of the system.

(ii)(a) From July 1, 2005, to June 30, 2007, an active member who has previously elected to be a noncontributory member of the system may make an irrevocable election to become a contributory member of the system.

(b) If the election is made before the preparation of the first salary payment to the member in the fiscal year, the election is effective immediately.

(c) If the election is made after the preparation of the first payroll containing the first salary payment to the member in the fiscal year, the election is effective July 1 of the next fiscal year.



(iii) Effective July 1, 2021, regardless of an earlier election to be a noncontributory member of the system, an active member whose status later changes from nonteacher status to administrator or teacher status under a contract for one hundred eighty-five (185) days or more shall become a contributory member of the system otherwise provided for in this section.

(D) On and after July 1, 2007, an active member who has previously been a noncontributory member of the system, by election or otherwise, may make an irrevocable election to become a contributory member of the system under this section.

(2)(A)(i) Effective July 1, 1999, an inactive member who reenters the system shall elect to become a contributory or noncontributory member of the system within one (1) year of the effective date that the member is considered an active member of the system.

(ii) The election is effective the earlier of the:

(a) Preparation of the payroll containing the first salary payment upon the reentry of the member into the system; or

(b) July 1 immediately following the date the election is filed with the system.

(iii) If the member does not make an election within one (1) year, then the status of the member before the member reentered the system remains in effect.

(B) Effective July 1, 2007, an inactive member who becomes an active member of the system shall reenter as a contributory member of the system if the member was contributory when he or she first entered the inactive status.

(C) Effective July 1, 2007, an inactive member or a rescinding retiree who reenters the system may make an irrevocable election to become a contributory member of the system under this section at the time of his or her reemployment regardless of his or her previous noncontributory status.

(D) If the election is made:

(i) Before the preparation of the first salary payment to the member in the fiscal year, the election is effective immediately; and

(ii) After the preparation of the first payroll containing the first salary payment to the member in the fiscal year, the election is effective July 1 of the next fiscal year.

(3)(A) Effective July 1, 1999, a new member shall be a contributory member of the system.

(B) From July 1, 1999, to June 30, 2007, a new member who is under contract with a covered employer for one hundred eighty (180) days or less shall have one (1) year to make an irrevocable election to become a contributory member of the system.

(C) From July 1, 1999, to June 30, 2007, a new member who is not under contract with a covered employer shall not become a contributory member of the system.

(D)(i) From July 1, 2007, to July 1, 2021, a new member under contract with a covered employer for one hundred eighty-one (181) days or more shall be a contributory member of the system.

(ii) A new member not under contract with a covered employer may make an irrevocable election to become a contributory member of the system under this section.

(E)(i) Effective July 1, 2021, a member under contract with a covered employer for one hundred eighty-five (185) days or more shall be a contributory member of the system.

(ii) A member under contract with a covered employer for one hundred eighty-four (184) days or less may make an irrevocable election to become a contributory member of the system.

(4)(A) The board may exclude the participation of a member under this subsection if the board determines that the contributions of a member may not be treated as employer contributions under the:

(i) Internal Revenue Code, 26 U.S.C. § 1 et seq.; or

(ii) Income Tax Act of 1929, § 26-51-101 et seq.

(B) The board shall interpret this subsection in a manner that is consistent with the requirements of the:

(i) Internal Revenue Code; and

(ii) Applicable United States Department of the Treasury regulations under the Internal Revenue Code, 26 U.S.C. § 401(a).

(f)(1) Employees who are eligible for membership in the system under § 24-7-202, who are or have been erroneously enrolled in the Arkansas Public Employees' Retirement System, whose membership in that system is cancelled, and whose employee or employer contributions are refunded by that system under §§ 24-2-301 — 24-2-305, shall make member contributions to the system as provided in subdivision (b)(2) of this section.

(2) If such an employee becomes an active member of the contributory plan of this system, he or she may establish contributory service credit for all or part of his or her service that is cancelled by the system by paying the actuarial equivalent of the member's benefits to the system.

(g)(1)(A) Each employer shall pay the member contributions under this section from the salary earned by a member after June 30, 1997, and those contributions shall then be treated as employer contributions in determining tax treatment under the provisions of the Internal Revenue Code, 26 U.S.C. § 1 et seq., and the Income Tax Act of 1929, § 26-51-101 et seq.

(B) For service purchase accounts established before July 1, 2011, that have an irrevocable payroll authorization established before July 1, 2012, or for accounts established by the system to allow a member to make payments on unreported or incorrectly reported contributory service, a member may elect to establish past service through payroll deductions, and the employer shall pay the amount required to establish the past service from the employee's salary earned after the employee signs an irrevocable payroll authorization prescribed by the board, and those payments shall then be treated as employer contributions in determining tax treatment under the Internal Revenue Code, 26 U.S.C. § 1 et seq., as it existed on January 1, 2011, and the Income Tax Act of 1929, § 26-51-101 et seq.



(2) Each employer shall continue to withhold federal and state income taxes based upon those contributions as income of the member until the Internal Revenue Service or the federal courts rule that, pursuant to the Internal Revenue Code, 26 U.S.C. § 414(h), the contributions shall not be included as gross income of the member until they are distributed or made available to the member.

(3) The employer shall pay these member contributions from the same source of funds used in paying the salary to the member. The employer may pay these contributions by a reduction in the cash salary of the member, by a setoff against future salary increases, or by a combination of a reduction in salary and a setoff against future salary increases.

(4) If member contributions are paid by the employer as provided under this subsection, they shall be treated for all purposes of the system in the same manner and to the same extent possible as member contributions made prior to the date the employer began payment of the member's contributions hereunder.

(5) Whenever member contributions are required to be paid by the employer under this subsection, the employee shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer.

**History.** Acts 1973, No. 427, § 8; 1975, No. 549, § 4; 1977, No. 541, § 3; 1981, No. 365, § 4; 1981, No. 435, § 1; 1983, No. 619, § 7; 1983, No. 665, § 7; 1985, No. 504, § 2; 1985, No. 805, § 5; A.S.A. 1947, § 80-1442; Acts 1989, No. 821, § 8; 1989, No. 652, § 3; 1991, No. 14, § 1; 1991, No. 43, § 2; 1993, No. 435, §§ 4, 5; 1995, No. 460, § 2; 1995, No. 542, §§ 2, 3; 1997, No. 206, § 1; 1997, No. 393, § 1; 1999, No. 11, § 2; 1999, No. 81, §§ 1, 2; 1999, No. 864, § 1; 1999, No. 907, §§ 1, 2, 4; 2001, No. 155, § 3; 2003 (2nd Ex. Sess.), No. 23, § 1; 2003 (2nd Ex. Sess.), No. 47, § 1; 2005, No. 385, § 2; 2007, No. 93, § 1; 2009, No. 468, §§ 7-9; 2011, No. 41, § 2; 2011, No. 69, §§ 5-10; 2013, No. 602, § 1; 2017, No. 550, § 1; 2019, No. 297, § 2; 2019, No. 427, § 8; 2021, No. 190, § 3; 2021, No. 279, § 8; 2021, No. 443, §§ 1, 2.

**A.C.R.C. Notes.** Acts 2019, No. 297, § 1, provided: "Legislative history, findings, and intent.

"(a) The General Assembly finds that:

"(1) Member contributions as a portion of the salary of an individual employed by a school or an educational institution has been a historical component of the Arkansas Teacher Retirement System since 1937;

"(2) Acts 1937, No. 266 created the Arkansas Teacher Retirement System to

manage contributions made by teachers to the retirement system in order to ensure that every teacher receives an annuity upon his or her retirement;

"(3) The Arkansas Teacher Retirement System Act originally required a teacher to contribute four percent (4%) of his or her salary to fund the investment of the retirement system in the retirement of the teacher;

"(4) When the Arkansas Teacher Retirement System Act was first enacted, every teacher:

"(A) Had to contribute to the retirement system; and

"(B) Was enrolled as a contributory member of the retirement system;

"(5) Throughout the eighty-one (81) year history of the retirement system, the law has been amended multiple times to either allow a member to opt-in or opt-out of his or her contributory or noncontributory status in the retirement system as follows:

"(A) From the time the Arkansas Teacher Retirement System Act was first enacted until 1986, the provisions of the act did not provide an option for a member to become a noncontributory member that was consistent with the design of the retirement system;

"(B) Acts 1985, No. 504 allowed a new member of the retirement system to elect whether he or she would participate as a contributory or noncontributory member of the retirement system, and if the member did not make an election, the member was enrolled as a contributory member of the retirement system;

"(C) Amendments to the Arkansas Teacher Retirement System Act that occurred between 1986 and 1991 added new categories of employees from various state agencies or eligibility requirements that affected the reporting or classifications of the employees;

"(D) Acts 1989, No. 821 allowed a member of the retirement system to make a one-time additional election to become a contributory or noncontributory member of the retirement system;

"(E) Effective July 1, 1991, a new member of the retirement system was enrolled as a noncontributory member of the retirement system and could elect to become a contributory member of the retirement system.

"(F) Additionally, effective July 1, 1991, if a member became an inactive member who later returned to the retirement system, the member was enrolled as a noncontributory member of the retirement system with the option of electing to become a contributory member of the retirement system;

"(G) Similar to Acts 1985, No. 504, Acts 1991, No. 14 allowed new and returning members to the retirement system to be enrolled as noncontributory members of the retirement system with the option of electing to become a contributory member of the retirement system;

"(H) Acts 1993, No. 435, effective July 1, 1993, allowed a member to annually change his or her status from a:

"(i) Contributory to noncontributory member of the retirement system; or

"(ii) Noncontributory to contributory member of the retirement system;

"(I) Acts 1995, No. 332 added more state agency employees to the retirement system while Acts 1995, No. 542 changed the amount of service an employee was required to have before he or she could become an active member of the retirement system;

"(J) Acts 1997, No. 393 amended the annual election window of a member to be effective for July 1 of the year of the

election if the member made the election before October of that same year;

"(K) Acts 1999, No. 81, effective July 1, 1999, eliminated the noncontributory option for a new member and allowed a current member a one-time irrevocable option to become either a contributory or noncontributory member of the retirement system;

"(L) Acts 1999, No. 81 set a different requirement for an election to become either a contributory or noncontributory member of the retirement system that was based on the status of the member as an active, inactive, or new member of the retirement system;

"(M) Acts 1999, No. 907 repealed Acts 1999, No. 81 and allowed certain members to retain the option to elect either contributory or noncontributory status in the retirement system;

"(N) The Arkansas Teacher Retirement System notified the members of the retirement system of the election permitted under Acts 1999, No. 907, and allowed a member with service credit as of June 30, 1998 to make a final election to become a contributory or noncontributory member of the retirement system by June 30, 2000;

"(O) Acts 2003, No. 23 allowed an active member who previously elected a noncontributory status to make an irrevocable election to become a contributory member of the retirement system;

"(P) Additionally, Acts 2003, No. 23 required the length of a contract between a member and school to determine the:

"(i) Status of a member as a contributory or noncontributory member of the retirement system; and

"(ii) Right of a member to elect a contributory or noncontributory status in the retirement system;

"(Q) Acts 2003, No. 23 permitted a member who transferred from employment as a nonteacher to employment as a teacher with a contract of one hundred eighty-one (181) days or more to become a contributory member of the retirement system regardless of a previous election made by the member;

"(R) Effective July 1, 2005, Acts 2005, No. 385 provided an active member who previously elected to become a noncontributory member of the retirement system with the option of irrevocably electing



to become a contributory member of the retirement system; and

"(S) Effective July 1, 2007, Acts 2007, No. 93 provided a member with an option to elect to be a contributory member depending on whether the member was:

"(i) An active, non-contributory member of the retirement system;

"(ii) An inactive member or a rescinding retiree reentering the retirement system; or

"(iii) A new member of the retirement system under contract for one hundred eighty (180) days or less;

"(6) The right of a member to elect a contributory or noncontributory status in the retirement system has not been amended since the passage of Acts 2007, No. 93;

"(7) Myriad legislative amendments have continuously changed the ability of a member of the retirement system to become a revocable or irrevocable contributory or noncontributory member of the retirement system;

"(8) The classification of a member as an active, an inactive, or a new member of the retirement system affects the right of a member to elect a contributory or non-contributory status in the retirement system;

"(9) The incorporation of the various legislative amendments into the Arkansas Code has created challenging subsections and subdivisions of the law through which the retirement system must determine the status of a member based on when the member first:

"(A) Enrolled in the retirement system;

"(B) Returned to the retirement system; or

"(C) Elected a different status in the retirement system;

"(10) The election of a contributory or noncontributory status in the retirement system affects the retirement benefit calculation for a member;

"(11) A restructuring of § 24-7-406(e) concerning the contributory or noncontributory status of a member of the retirement system is intended to retain existing law without impairing, broadening, or changing the applicability of § 24-7-406(e) to the current status of a member;

"(12) The purpose of the amendment to § 24-7-406(e) is to simplify the current language and application of the statute to the current contributory or noncontribu-

tory status of a member of the retirement system, so that the retirement system may correctly and efficiently manage records pertaining to a member; and

"(13) Therefore, a restructuring of § 24-7-406(e) is necessary to:

"(A) Accurately and logically organize the language of the statute in order to prevent ambiguity of the law and allow the Arkansas Teacher Retirement System to administer vested benefits and manage the accounts of its members;

"(B) Clarify the existing provisions under § 24-7-406(e) so that the provisions may be correctly interpreted and efficiently managed by the retirement system;

"(C) Preserve and retain existing law regarding the vested contributory or non-contributory status of a member of the retirement system;

"(D) Neither expand nor contract a current vested or nonvested contributory or noncontributory status of a member of the retirement system; and

"(E) Provide a logical framework for a future amendment to § 24-7-406(e)."

**Amendments.** The 2017 amendment rewrote (b)(8)(A); added "to apply to subsequent fiscal years until changed" in (b)(8)(C); and rewrote (b)(8)(D).

The 2019 amendment by No. 297 rewrote (e).

The 2019 amendment by No. 427 substituted "leave covered employment" for "left covered employment before July 1, 1985" in (b)(5).

The 2021 amendment by No. 190, in (c)(1)(B)(i), deleted "Before July 1, 2011", inserted "or salary", substituted the second occurrence of "member" for "employee" and substituted "after the contributions are due" for "if the unreported service is within the look-back period under § 24-7-205"; deleted former (c)(1)(B)(ii) and redesignated former (c)(1)(B)(iii) as (c)(1)(B)(ii); and, in (c)(1)(B)(ii), inserted "member contributions and interest on the unreported", substituted "are paid" for "is paid", and added "or the service is converted to non-contributory service credit under § 24-7-205(b)(1)(C)".

The 2021 amendment by No. 279, in (e)(1)(B)(iv), substituted "has previous noncontributory credited service" for "previously elected to become a noncontribu-

tory member of the system" in (e)(1)(B)(iv).

The 2021 amendment by No. 443 substituted "From July 1, 2005, to July 1, 2021" for "Effective July 1, 2005" in (e)(1)(C)(i); added (e)(1)(C)(iii); substi-

tuted "From July 1, 2007, to July 1, 2021" for "Effective July 1, 2007" in (e)(3)(D)(i); deleted former (e)(3)(D)(ii); redesignated former (e)(3)(D)(iii) as (e)(3)(D)(ii); and added (e)(3)(E).

#### **24-7-410. Retirement fund assets accounts — Income-expense account.**

(a) The income-expense account shall be the account to which shall be credited all investment income from invested assets of the Arkansas Teacher Retirement System. It shall also be the account in which shall be accumulated the contributions made by employers for the administrative expenses of the system and from which shall be made annual transfers of interest credits to the other accounts of the system and from which shall be paid all the expenses of the Board of Trustees of the Arkansas Teacher Retirement System necessary for the administration and operation of the system.

(b) The board may accept gifts and bequests, which shall be credited to the income-expense account along with all other moneys received by the system the disposition of which is not specifically provided for in this act.

(c) Each year, the General Assembly shall appropriate the amounts of money certified by the board as required to pay the proper administrative expenses of the system.

(d) [Repealed.]

(e) Whenever the board determines that the balance in the income-expense account is more than sufficient to cover the current charges to the account, the board may, by resolution, provide for contingency reserves, or for the transfer of the excess, or portions thereof, to cover the needs of the other accounts of the system.

**History.** Acts 1973, No. 427, § 8; 1979, Acts 2009, No. 962, § 43; 2015, No. 301, No. 681, § 4; 1983, No. 619, § 12; 1983, § 6.  
No. 665, § 12; A.S.A. 1947, § 80-1442;

#### **24-7-411. Compelling payment upon delinquency of employer.**

(a)(1) If an employer fails to remit moneys that are required by law or rule to the Arkansas Teacher Retirement System by the date and at the frequency established by the Board of Trustees of the Arkansas Teacher Retirement System, the system shall impose an interest penalty equal to the actuarially assumed rate of return on investments of the Arkansas Teacher Retirement System Fund in the form of interest applied on an annual basis to the moneys due.

(2) The interest penalty shall be determined by the system on the date the delinquent funds are received, and a statement of the interest penalty shall be sent to the employer.

(3) If the interest penalty or delinquent moneys are not received by the system by the last business day of the month in which the moneys



were originally due, then the system may transfer the sums of moneys, including the interest penalty, from any moneys due the employer from the Treasurer of State and the Department of Education as provided in § 19-5-106(a)(5).

(4) The interest penalty shall be computed on the actual days of delinquency and shall be paid to the system to reimburse the trust fund for the money that would have been earned on the moneys had they been paid when due.

(b)(1) If an employer fails to file with the system a report required by the board by the date established by the board, then the system shall impose a penalty of one hundred fifty dollars (\$150) for each late report.

(2) A statement of the penalty shall be sent to the employer.

(3) If the penalty is not received by the last business day of the month in which the report was due, then the system may transfer the penalty amount from any moneys due the employer from the Treasurer of State and the Department of Education as provided in § 19-5-106(a)(5).

(4) The penalty amounts collected shall be deposited to the credit of the administrative funds of the system to help defray the cost of additional expenses incurred due to the additional work required to process late reports.

(5) In addition to the late report penalty under subdivision (b)(1) of this section, the system may impose an additional penalty of five hundred dollars (\$500) for a report that is filed with the system over one (1) month late.

(c) The board or its designee may waive penalties and interest for an employer delinquency under this section if the board or its designee finds that:

(1) The delinquency was not the result of the employer's nondisclosure, fraud, or misrepresentation; and

(2) Under the circumstances, requiring payment of the delinquency by the employer would be unduly penal, burdensome, or result in a manifest injustice.

(d)(1) If an employer fails to remit system contributions and reports required under subsections (a) and (b) of this section, the amount of delinquent funds including contributions, penalties, and interest owed to the system may be deducted from the operating funds designated to the employer through the department and remitted directly by the department to the system's appropriate account for the use and benefits of the members.

(2) The operating funds from which delinquent funds may be deducted for a public school district or open-enrollment public charter school are limited to:

(A) State funding distributed under § 6-20-2305, including without limitation state foundation funding and state categorical funding;

(B) Federal funding to the extent allowed under federal law; and

(C) The net assets of an open-enrollment public charter school deemed property of the state upon revocation or nonrenewal of the charter.

(e)(1) Beginning on July 1, 2022, the member and employer contributions made by an employer as provided in §§ 24-7-401 and 24-7-406 shall be:

(A) Reported electronically by the employer through the system portal; and

(B) Paid by the employer through electronic transfer.

(2) An employer contribution shall be:

(A) Paid to the system at the time and at the frequency established by the board; and

(B) Paid concurrently with contributions made by the employees of the employer to the system.

(f)(1) An employer shall submit a written request for a temporary waiver to the board by July 1, 2022, when the employer is unable to:

(A) Report contributions electronically through the system; or

(B) Pay contributions to the system by electronic transfer.

(2) A request for a temporary waiver submitted under subdivision (f)(1) of this section shall include a timeline for when the employer will be able to comply with the payment and reporting requirements under this section.

**History.** Acts 1973, No. 427, § 8; A.S.A. 1947, § 80-1442; Acts 1993, No. 300, § 1; 2007, No. 97, § 5; 2009, No. 467, § 1; 2013, No. 448, § 1; 2019, No. 315, § 2886; 2021, No. 220, §§ 1, 2.

**Amendments.** The 2019 amendment inserted "rule" in (a)(1).

The 2021 amendment deleted "participating public" or "participating" preceding "employer" throughout (a) and (b); rewrote (a)(1); deleted (a)(2) and redesignated the remaining subdivisions accordingly; substituted "may transfer the sums

of moneys, including the interest penalty" for "shall cause the sums of moneys, including the interest penalty, to be transferred" in (a)(3); substituted "date established by the board" for "fifteenth day of the month in which the report is due" in (b)(1); deleted former (b)(2) and redesignated the remaining subdivisions accordingly; substituted "may transfer the penalty amount" for "shall cause the penalty amount to be transferred" in (b)(3); added (e) and (f); and made stylistic changes.

## SUBCHAPTER 5 — ARKANSAS TEACHER RETIREMENT SYSTEM — MEMBERSHIP

### SECTION.

24-7-502. Termination of active membership — Definitions.

24-7-505. Buyout plan for inactive members — Definition.

### SECTION.

24-7-506. Outsourcing — Election to participate — Definitions.

24-7-507. Youth participants — Summer work programs.

**Effective Dates.** Acts 2017, No. 647, § 2: Mar. 24, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the

Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and



updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2021, No. 190, § 5: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are in urgent need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; that reporting errors have resulted in harm to the members of the system; that the reporting errors caused members to not receive service credit that the members had earned; that the members are not at fault for the harm

caused by the reporting errors; that the option of purchasing earned service credit at actuarial cost would be an excessive burden for the members; that this act is necessary to establish a fairer remedy for the harm caused to the members than the current law provides; that a July 1, 2021 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures referenced in this act; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 279, § 38: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 290, § 3: Sept. 1, 2021.

## **24-7-502. Termination of active membership — Definitions.**

(a)(1) A member of the Arkansas Teacher Retirement System shall terminate covered employment and remain terminated during the

member's applicable termination separation period to become and remain eligible for retirement.

(2) Effective September 1, 2021, a member shall not be terminated from employment for purposes of retirement eligibility if within six (6) calendar months of the member's effective date of retirement the member:

(A) Becomes employed with a covered employer; and

(B) Has not attained the system's normal retirement age.

(3) A member who fails to meet both the termination requirement and the termination separation period requirement of this subsection shall:

(A) Repay retirement benefits paid during the period the member did not meet the requirements; and

(B) Forfeit all future retirement benefits until the member files a new completed retirement application using the standard system process.

(4) The system may require the repayment of retirement benefits, interest, and distributions from the member directly or indirectly by using the system's standard withholding rule.

(5) If a member fails to meet the termination requirement or to complete the termination separation period, then the member is not eligible to receive retirement benefits until the member files a new completed retirement application using the standard system process. The member shall be subject to a new termination separation period.

(6) During the termination separation period, the member shall remain terminated and shall not:

(A) Form an employment relationship with any system-covered employer;

(B) Render any compensable services to or on behalf of any system-covered employer, except that a member may provide volunteer activities at a system-covered employer that does not have the effect of holding a position open for the member during a termination separation period; and

(C) Exercise any authority to act as a representative of any system-covered employer or exercise any authority over employees of any system-covered employer.

(b)(1) When a member is no longer employed by an employer in a position covered by the system, the person shall cease to be an active member of the system.

(2) If an inactive member has not retired and later becomes reemployed by an employer in a position covered by the system, the member shall become an active member and be eligible to accrue additional service credit.

(3) If the member's service credit during reemployment is less than one-fourth ( $\frac{1}{4}$ ) of a fiscal year under § 24-7-601, he or she shall be considered to be an inactive member at the termination of the reemployed service, and the only monthly benefits payable shall be those provided by § 24-7-707.



(4) For previous service rendered before July 1, 1971, service credit shall be permitted for service in a fiscal year only if the minimum days of service rendered is sufficient for one (1) year of service credit under § 24-7-601 in a fiscal year.

(c) Upon a member's retirement, the person shall cease to be an active member and, except as otherwise provided in this act, he or she shall not accrue additional service credit or make contributions to the system.

(d) As used in this section:

(1)(A) "Terminate" means:

(i) The member's covered employment has ended at all covered employers;

(ii) A complete severance of the employer-employee relationship has occurred at all covered employers that the member was employed with before the member retired from the Arkansas Teacher Retirement System;

(iii) The member has ceased performing any employment services for any covered employer, except for uncompensated functions related to the transfer of the duties or the transfer of the position of the member;

(iv) The member has not formed any express or implied employment agreement or taken action that would obligate the member to render compensable services to a covered employer or entitle a covered employer to the services of the member after the termination separation period;

(v) The member has followed normal retirement procedures for resigning from the covered employer unless involuntarily terminated before the member's effective date of retirement; and

(vi) All covered employers have paid or have initiated the process to pay all accumulated benefits such as annual leave and sick leave to the member by the effective date of retirement.

(B) "Terminate" does not mean:

(i) Taking a leave of absence; or

(ii) Performing any job duties or services without remuneration, except for the functions related to the transfer of duties or the transfer of the position itself.

(C) Providing volunteer activities at a covered employer that does not have the effect of holding a position open for the member during a termination separation period does not mean that the member is not terminated; and

(2) "Termination separation period" means the time from a member's effective date of retirement until the date that the member is no longer prohibited by state law from returning to work at a covered employer.

**History.** Acts 1973, No. 427, § 6; 1975, 1989, No. 652, § 5; 1993, No. 435, § 6; No. 549, § 3; 1977, No. 541, § 2; 1981, No. 1995, No. 542, § 4; 2001, No. 1146, § 1; 365, § 3; 1983, No. 619, § 6; 1983, No. 2007, No. 97, § 7; 2009, No. 743, § 1; 665, § 6; A.S.A. 1947, § 80-1440.3; Acts 2011, No. 45, § 3; 2011, No. 69, § 12;

2011, No. 565, §§ 1, 2; 2011, No. 974, § 2; 2021, No. 190, § 4; 2021, No. 279, § 9; 2021, No. 290, § 2.

**Amendments.** The 2021 amendment by No. 190, deleted (b)(4)(A) and redesignated (b)(4)(B) as (b)(4).

The 2021 amendment by No. 279, substituted “covered employer” for “system-covered employer” throughout the section; deleted former (d)(1) and redesignated former (d)(2) and (3) as (d)(1) and (2); substi-

tuted “covered employment” for “system-covered employment” in (d)(1)(A)(i); in (d)(1)(A)(ii), added “that the member was employed with before the member retired from the Arkansas Teacher Retirement System”.

The 2021 amendment by No. 290 rewrote (a)(2).

**Effective Dates.** Acts 2021, No. 290, § 3: Sept. 1, 2021.

### **24-7-505. Buyout plan for inactive members — Definition.**

(a) As used in this section, “buyout plan” means a voluntary program established by the Board of Trustees of the Arkansas Teacher Retirement System to make a one-time lump-sum payment to a member, surviving spouse, or alternate payee in exchange for a member’s, surviving spouse’s, or alternate payee’s cancellation of membership and retirement benefit rights in the Arkansas Teacher Retirement System.

(b)(1) The board may adopt rules as necessary to implement this section.

(2) A buyout plan established by the board:

(A) May be offered periodically and have a limited term of duration for participation, as determined by a resolution adopted by the board at a meeting of the board;

(B) Shall specifically identify the formulas by which contributory and noncontributory service or a future retirement benefit will be purchased by the system as a one-time lump-sum payment from the system, paid directly to the member, surviving spouse, or alternate payee or transferred to another administrator in compliance with the Internal Revenue Code; and

(C) Applies only to a group of members, group of surviving spouses, or group of alternate payees, who:

(i) Are identified by the board as a group eligible to participate in a buyout plan offered by the board; and

(ii) Elect to participate in a buyout plan in exchange for future benefit rights in the system.

(3) A buyout plan established by the board may be extended, modified, or expanded by board resolution.

(c) A member is eligible to participate in a buyout plan if the member is:

(1) Eligible for deferred retirement under § 24-7-707; and

(2) Inactive for a minimum of one (1) year following the last fiscal year that the member rendered actual service to a covered employer and received at least one-fourth ( $\frac{1}{4}$ ) year of service credit.

(d) The board may offer a buyout plan to surviving spouses or alternate payees who:

(1) Are eligible for a future retirement benefit from the system; and

(2) Have not received a retirement benefit from the system.



(e) A member who participates in a buyout plan shall receive a one-time lump-sum payment from the system that cancels interest in any retirement benefit and all future rights in the system effective upon tender of payment by the system.

(f) A buyout plan may be used to cancel both a member's contributory and noncontributory credited service in the system.

(g) A member who receives a buyout of his or her credited service under this section may repurchase his or her previously credited service as contributory service after becoming an active member of the system as if the service had been private school service.

**History.** Acts 2013, No. 606, § 1; 2017, No. 647, § 1.

**Amendments.** The 2017 amendment added (b)(3).

### **24-7-506. Outsourcing — Election to participate — Definitions.**

(a) As used in this section:

(1)(A) "Covered employer" means any public school, public educational agency, or other eligible employer participating in the Arkansas Teacher Retirement System.

(B) "Covered employer" does not include a nonmandatory employer or a PSHE employer as defined under § 24-7-1602;

(2)(A) "Embedded employee" means a person who:

(i) Provides an outsourced service on the premises of a covered employer; and

(ii) Is employed and paid by an outsource contractor.

(B) "Embedded employee" does not include a person who is employed by:

(i) A covered employer listed under § 24-7-202; or

(ii) An employer that offers the Arkansas Teacher Retirement System as an optional retirement plan as of the date of outsourcing;

(3) "Outsource" or "outsourcing" means the use of a contractor by a covered employer for the performance of a service common to the normal daily operation on the premises of the covered employer;

(4) "Outsource contractor" means a person who is contractually obligated under an outsourcing agreement to provide a covered employer with a service common to the normal daily operation of the covered employer;

(5) "Participating employer" means a covered employer that outsources and opts for the embedded employees of all of its outsource contractors to become members of the Arkansas Teacher Retirement System;

(6)(A) "School nursing" means a nursing service that is required to be offered in a public school under § 6-18-706 or the Standards for Accreditation of Arkansas Public Schools and School Districts.

(B) "School nursing" does not include nursing services provided by a:

(i) School-based health clinic under § 6-18-703;

(ii) Medical clinic operated on a public school campus by a hospital or physician's office that is under contract with the public school;

(iii) Healthcare provider other than a nurse; or

(iv) Healthcare service reimbursed or paid for by Medicaid, Medicare, health insurance, or any other third-party payer;

(7) "Service common to the normal daily operation" means and is limited to a service that:

(A) Is provided by an outsource contractor or embedded employee to a covered employer;

(B) Is physically provided or based on the premises of a covered employer;

(C) Is paid for with public funds and not with private grant funds; and

(D) Consists of one (1) or more of the following:

(i) The maintenance and operation of:

(a) One (1) or more vehicles used for the regular and daily transport of passengers; and

(b) A facility that provides support for the maintenance and operation of one (1) or more vehicles described under subdivision (a)(7)(D)(i)(a) of this section;

(ii) The maintenance and operation of a cafeteria or other food service operation;

(iii) Custodial or maintenance services for the regular and continuous maintenance, repair, and upkeep of grounds or facilities;

(iv) Security services that are not covered by another retirement system;

(v) School nursing;

(vi) Substitute teaching; or

(vii) Service as a teacher's aide; and

(8) "Surcharge employer" means a covered employer that outsources and pays a surcharge to the Arkansas Teacher Retirement System in lieu of opting for the embedded employees of outsource contractors to accrue service credit in the Arkansas Teacher Retirement System.

(b) A covered employer that enters into an agreement to outsource a service common to the normal daily operation shall make an irrevocable election to be either a participating employer or a surcharge employer within sixty (60) days of the outsourcing agreement on a form provided by or in a manner established by the Arkansas Teacher Retirement System.

(c)(1) If a covered employer elects to become a surcharge employer under this section, then the covered employer shall account for and remit to the Arkansas Teacher Retirement System a monthly surcharge on the total salaries paid to all the embedded employees on an aggregate basis as follows:

(A) Five-tenths of one percent (0.5%) during the 2018 fiscal year;

(B) One percent (1%) during the 2019 fiscal year;

(C) Two percent (2%) during the 2020 fiscal year;

(D) Three percent (3%) during the 2021 fiscal year; and

(E) An amount not to exceed four percent (4%) during the 2022 fiscal year and succeeding fiscal years as established by a resolution



of the Board of Trustees of the Arkansas Teacher Retirement System at a meeting of the board.

(2) If the covered employer is outsourcing on August 1, 2017, the surcharge shall be payable beginning in the 2018 fiscal year.

(3) A surcharge adopted by the board applies to an entire fiscal year and shall be adopted prior to the beginning of the fiscal year.

(d) If a covered employer elects to become a participating employer as provided under this section, then the covered employer shall account for and remit each of the covered employer's contributions in the same amount and in the same manner as required for covered employer contributions under § 24-7-401 and member contributions under § 24-7-406.

(e)(1)(A) A covered employer that begins outsourcing after August 1, 2017, and elects to become a participating employer may phase-in the election by selecting an effective date that is no later than the beginning of the third fiscal year after the effective date of the outsourcing agreement.

(B) During the phase-in of becoming a participating employer, the covered employer shall account for and remit a phase-in surcharge in the same amount and manner required of a surcharge employer under subsection (c) of this section.

(2)(A) If a covered employer is outsourcing on August 1, 2017, and the covered employer elects to become a participating employer, then the covered employer may phase-in the election by selecting an effective date that is no later than the beginning of the fourth fiscal year after August 1, 2017.

(B) During the phase-in of becoming a participating employer, the covered employer shall account for and remit a phase-in surcharge in the same amount and manner as required of a surcharge employer under subsection (c) of this section.

(f)(1) The Arkansas Teacher Retirement System may require a covered employer that makes an election under this section to provide any documentation necessary to collect and account for the surcharge or contributions as is consistent with the covered employer's election.

(2) The Arkansas Teacher Retirement System may collect an unremitted surcharge amount due, including interest, from a surcharge employer under § 24-7-401 or contribution due from a participating employer under § 24-7-406 in any manner allowed by law.

(3) If a covered employer reasonably accepts a written statement from an outsource contractor reporting the salaries paid by the outsource contractor to embedded employees for services common to the normal daily operation of the covered employer, it shall be conclusively presumed that the written statement accurately reflects the salaries subject to surcharge under this section.

(g)(1) A covered employer or an outsource contractor may request a determination from the Arkansas Teacher Retirement System as to whether an embedded employee performs or will perform a service common to the normal daily operation of a covered employer.

(2) A request made under subdivision (g)(1) of this section shall include:

(A) Information about the employment relationship and contract provisions that are necessary for the Arkansas Teacher Retirement System to evaluate the service provided to the covered employer; and

(B) Any additional information requested by the Arkansas Teacher Retirement System to make the determination.

(3) The board may promulgate rules necessary to administer this section.

(h)(1) The Division of Youth Services Education System shall be a participating employer and may designate any or all of its embedded employees as eligible for membership in the Arkansas Teacher Retirement System.

(2) An embedded employee of a contractor for the Division of Youth Services Education System who becomes a member of the Arkansas Teacher Retirement System shall remain a member of the Arkansas Teacher Retirement System as long as the member remains an embedded employee of a contractor for the Division of Youth Services Education System.

(i) The use of the terms “employee” and “employer” in this section does not:

(1) Create or modify an employment relationship between an embedded employee and a covered employer;

(2) Create, permit, expand, or modify any liability or obligation by a covered employer to an embedded employee; or

(3) Create, permit, expand, or modify any cause of action by an embedded employee against a covered employer under any employment, labor, civil rights, or other law.

**History.** Acts 2017, No. 575, § 2.

**A.C.R.C. Notes.** Acts 2017, No. 575, § 3, provided: “Within sixty (60) days of the effective date of this act [August 1, 2017], a covered employer that is outsourcing a service common to normal daily operation shall make an irrevocable election to be either a participating employer or a surcharge employer on a form provided by or in a manner established by the Arkansas Teacher Retirement System.”

Acts 2017, No. 575, § 4, provided: “Except for the Division of Youth Services Education System, each covered employer shall provide the Arkansas Teacher Retirement System with a preliminary report accounting for the total amount of salary paid to embedded employees of outsource contractors no later than sixty (60) days from the effective date of this act [August 1, 2017].”

## **24-7-507. Youth participants — Summer work programs.**

(a) At the request of the Arkansas Teacher Retirement System, a covered employer shall provide the system with a memorandum of understanding, partnership agreement, or another similar document related to the covered employer’s actions as a pass-through fiscal agent for participants described in § 24-7-202(16)(B).

(b) A covered employer who acts as a pass-through fiscal agent shall not be required to report participants described in § 24-7-202(16)(B) as “employees” for purposes of the system.



(c) The Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules for the implementation of this section.

**History.** Acts 2021, No. 691, § 2.

## SUBCHAPTER 6 — ARKANSAS TEACHER RETIREMENT SYSTEM — CREDITED SERVICE

### SECTION.

- 24-7-601. Credited service generally.
- 24-7-602. Military service credit.
- 24-7-603. Out-of-state service — Definition.
- 24-7-605. Service in General Assembly.
- 24-7-607. Private school service — Definition.
- 24-7-608. Limitation on benefit enhancement.

### SECTION.

- 24-7-610. Credit for service in National Guard and armed forces reserve — Definition.
- 24-7-611. Domestic federal service — Definition.
- 24-7-612. Service credit purchase.

**Effective Dates.** Acts 2015, No. 90, § 2: Feb. 13, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to operate the system efficiently and effectively; that until this act become effective, members will be unable to purchase additional certified private school service; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2015, No. 301, § 11: Mar. 4, 2015. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of clarification to operate the system efficiently and effectively; that such clarification is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2015, No. 558, § 2: Mar. 20, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able

to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of clarification to operate the system efficiently and effectively; that such clarification is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 200, § 2: Feb. 17, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating in order to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of a great importance to members of the system and to other citizens of the State of Arkansas; that the system needs the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public, peace, health, and safety shall become effective on: (1) The date it is approved by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 612, § 2: Mar. 23, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 427, § 23: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions of this act to begin on the first day of the fiscal year and to provide for the proper administration of the Arkansas Teacher Retirement System; that the updates and revisions to the Arkansas Teacher Retirement System Act are of



great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2019, No. 595, § 4: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act which created the Arkansas Teacher Retirement System as a state agency for the purpose of providing retirement benefits to school employees in Arkansas, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that having a July 1, 2019 effective date is necessary to allow the provisions of this act to take effect on the first day of the fiscal year in order to facilitate the proper administration of the Arkansas Teacher Retirement System; that revisions and updates to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and to protect member benefits; and that this act is necessary to maintain an orderly system of managing member benefits offered by the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 221, § 3: Mar. 2, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are in need of immediate revision and updating to conform with sound public pension policy and actuarial requirements; that

there are conflicts in the law applicable to the various retirement systems concerning concurrent service; that member benefits will be at risk if the conflicts in the law concerning concurrent service remain unresolved; that this act resolves the conflicts in the law concerning concurrent service; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System and reciprocal systems. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2021, No. 279, § 38: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 427, § 7: Mar. 23, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of § 24-7-201 et seq. are in need of immediate revision and updating to conform with sound public pension policy and actuarial requirements; that there are conflicts in the law applicable to the Arkansas Teacher Retirement System concerning reciprocal service in alternate retirement plans; that member benefits will be at risk if the conflicts in the law concerning reciprocal service in alternate retirement plans remain unresolved; that this act resolves the conflicts in the law

concerning reciprocal service in alternate retirement plans; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of this state; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System and reciprocal systems. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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### **24-7-601. Credited service generally.**

(a) By rule, the Board of Trustees of the Arkansas Teacher Retirement System shall fix and determine the number of years, and fraction thereof, of service to be credited each member for his or her employment as an employee.

(b)(1) A member shall be employed by an employer covered by the Arkansas Teacher Retirement System for a minimum of one hundred sixty (160) days per fiscal year to earn one (1) year of credited service.

(2) Fractional years of service may be granted beginning July 1, 1971, as prescribed by the board.

(3) A member shall not receive more than one (1) year of service credit for the member's employment with a covered employer and reciprocal system employer in any one (1) fiscal year.

(4)(A) Beginning July 1, 2011, a contributory member who accrues less than one-fourth ( $\frac{1}{4}$ ) year of service credit in a fiscal year may accumulate and carry forward days of service until the first fiscal year in which the contributory member accrues the minimum days of service required to credit one-fourth ( $\frac{1}{4}$ ) year of service credit.

(B) Upon the contributing member's accruing of a minimum of one-fourth ( $\frac{1}{4}$ ) year of service credit, the:

(i) Service credit shall be applied to the latest fiscal year; and

(ii) Carry-forward days shall be reset to zero (0).

(c)(1) Days of absence from service because of sickness shall be considered as service if the days are paid sick leave.

(2)(A) Except as provided under subdivision (c)(2)(B) of this section, paid or unpaid accrued, unused sick leave shall not be credited as service in the Arkansas Teacher Retirement System.



(B) If a member dies during active service on or after July 1, 2013, the member's accrued unused sick leave, whether paid or unpaid, shall be credited as service in the fiscal year of the member's death to determine the member's retirement eligibility, final average salary, and eligibility for other system benefits. The member's account shall be credited with:

(i) One (1) day of service for each day of accrued unused sick leave; and

(ii) One (1) day of service for any remaining partial day of sick leave.

(C) If a member dies during active service on or after July 1, 2013, the member's unused catastrophic leave and unused donated leave shall not be credited as service.

(d) No credited service may be granted by the board for service rendered before July 1, 1937.

(e)(1) The Arkansas Teacher Retirement System is a reciprocal system under §§ 24-2-401 — 24-2-405.

(2) In establishing eligibility for a benefit from the Arkansas Teacher Retirement System, the credited service under all reciprocal systems shall be totaled, and the total credited service shall be used in determining eligibility for an Arkansas Teacher Retirement System benefit.

(3) In determining the amount of a benefit from the Arkansas Teacher Retirement System, there shall be used only the actual service under the Arkansas Teacher Retirement System and the benefit formula of the Arkansas Teacher Retirement System.

(4) The final average salary used shall be that of the Arkansas Teacher Retirement System or any reciprocal system in which the member has at least two (2) years of service credit, whichever furnishes the highest final average salary at the time of retirement.

(5) When the Arkansas Teacher Retirement System provides a benefit amount that is not dependent on length of credited service, the benefit amount shall be reduced to the proportion that actual system service bears to total reciprocal system-credited service.

(6)(A) Except as otherwise provided under this subdivision (e)(6), reciprocal service earned from participation in an alternate retirement plan shall be used only if the member's contributions to the alternate retirement plan have not been withdrawn in full or in part from the alternate retirement plan by the member.

(B) The following shall not prevent a member from establishing reciprocal service in an alternate retirement plan:

(i) A withdrawal made by the member from the alternate retirement plan after the member attains fifty-nine and one-half (59 ½) years of age; and

(ii) An eligible rollover transaction under the Internal Revenue Code.

(C) In order to restore the use of reciprocal service, a member may repay to an alternate retirement plan a withdrawal made from the

alternate retirement plan by the member before the member attained fifty-nine and one-half (59 ½) years of age if allowed by the alternate retirement plan.

(D) A salary earned from participation in an alternate retirement plan shall not be used in the final average salary calculated by the system.

(E) The board may promulgate rules for the administration of reciprocal service under an alternate retirement plan, including without limitation rules for salaries, withdrawals, and rollover eligibility under this subdivision (e)(6).

(f) In any case of question as to the service credit of any person, the board shall have the final power to decide the question.

(g)(1)(A) Beginning July 1, 2013, the Arkansas Teacher Retirement System shall allow a member who earns concurrent service in both the Arkansas Teacher Retirement System and a reciprocal system to receive full service credit in the Arkansas Teacher Retirement System without reduction of service credit due to the concurrent service.

(B) Credited service in an alternate retirement plan or the Arkansas Public Employees' Retirement System is not allowed under subdivision (g)(1)(A) of this section.

(2) The Arkansas Teacher Retirement System shall not recognize any concurrent service added to the member's credited service in the Arkansas Teacher Retirement System that credits a member with more than one (1) year of credited service for a fiscal year or combines salary earned in both systems in a fiscal year for the purpose of:

(A) Vesting;

(B) Retirement eligibility; and

(C) Calculating final average salary.

(3)(A) A member may elect to waive all or part of the concurrent service credited to the member in the system and retire under a reciprocal system if the member acknowledges that the waiver is a voluntary surrender of the member's concurrent service credit in the system and cancels the member's concurrent service credit in the system.

(B) The employer-and-employee accrued contributions attributable to the concurrent service may be refunded to the employer and member.

**History.** Acts 1973, No. 427, § 5; 1979, No. 681, § 1; 1981, No. 365, §§ 1, 2; 1983, No. 619, §§ 4, 5; 1983, No. 665, §§ 4, 5; 1985, No. 805, § 2; A.S.A. 1947, § 80-1440; Acts 1989, No. 10, § 2; 1989, No. 653, § 3; 1991, No. 43, § 4; 2007, No. 97, § 8; 2011, No. 974, § 3; 2013, No. 555, §§ 1, 2; 2017, No. 200, § 1; 2017, No. 265, § 2; 2017, No. 612, § 1; 2019, No. 427, § 9; 2019, No. 595, § 1; 2021, No. 221, §§ 1, 2; 2021, No. 279, § 10; 2021, No. 427, § 2.

**Amendments.** The 2017 amendment by No. 200 redesignated former (c)(2) as (c)(2)(A); added "Except as provided under subdivision (c)(2)(B) of this section" at the beginning of (c)(2)(A); and added (c)(2)(B) and (C).

The 2017 amendment by No. 265 substituted "Arkansas Teacher Retirement System" for "system" references in (e) and (g) and made stylistic changes.

The 2017 amendment by No. 612 added (g)(3).



The 2019 amendment by No. 427 substituted "paid or unpaid accrued, unused sick leave shall not be credited as service in the Arkansas Teacher Retirement System" for "days of paid sick leave shall not be considered service if the payment is for unused sick leave" in (c)(2)(A).

The 2019 amendment by No. 595, in (e)(4), substituted the first occurrence of "salary" for "compensation" and inserted the second occurrence of "average".

The 2021 amendment by No. 221, in (e)(4), substituted "the Arkansas Teacher Retirement System or any reciprocal sys-

tem in which the member has at least two (2) years of service credit, whichever furnishes" for "the reciprocal system that furnishes"; deleted former (e)(5) and redesignated former (e)(6) as (e)(5); transferred the (g)(3)(A) designation to the beginning of (g)(3) and rewrote (g)(3)(B).

The 2021 amendment by No. 279 inserted "credit for the member's employment with a covered employer and reciprocal system employer" in (b)(3).

The 2021 amendment by No. 427 added (e)(6).

## **24-7-602. Military service credit.**

(a)(1) If an active member of the Arkansas Teacher Retirement System enters the United States Armed Forces during a period that a federal military draft was in effect and obtains a refund of member contributions from the system, the compulsory military service required of the member may be established as free credited service under this subchapter, if after an honorable discharge from the United States Armed Forces and before retirement the member repays to the system the actuarial equivalent of the member's refunded service.

(2) In addition, an active member who entered the United States Armed Forces during any period that a federal military draft was in effect and who becomes an active member after an honorable discharge from the United States Armed Forces is eligible to receive free military service credit under this section, whether or not the member has five (5) or more years of credited service at the time of the reemployment.

(3) When a member who is first employed after serving in the United States Armed Forces during a period of time that the military draft was in effect, he or she is eligible to receive free military service credit under this section if the member:

(A) Completes five (5) or more years of actual service in the system; and

(B) Receives an honorable discharge.

(b) All United States Armed Forces service not otherwise creditable under this section shall be creditable, provided the member pays to the system the actuarial equivalent for the service credit.

(c)(1) Effective December 12, 1994, a member who leaves employment with a school to serve, on a voluntary or involuntary basis, in the uniformed services of the United States and returns to employment with a school shall be treated as not having incurred a break in service with the employer. The employer shall certify to the system that reemployment was in accordance with the requirements set forth in section 4312 of the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353.

(2) Under this subsection, "uniformed services of the United States" is limited to the United States Armed Forces; the Army National Guard

and the Air National Guard when engaged in active duty for training, state active duty, inactive duty training, or full-time National Guard duty; the United States Commissioned Corps of the Public Health Service; and any other category of persons designated by the President of the United States in time of war or emergency.

(3) The cumulative length of the absence from a position of employment with the employer by reason of service in the uniformed services shall not exceed five (5) years.

(4) A member reemployed under this subsection shall be entitled to accrue benefits for the time he or she served in the uniformed services by paying the employee contributions set forth in § 24-7-406.

(5) An employer reemploying a member under this subsection shall pay to the system the employer contributions due for the time the member served in the uniformed services and shall be those required by § 24-3-103 [repealed]. However, should a member not pay the employee contributions due, then no employer contributions shall be due.

(6) For the purposes of determining the employee and employer contributions due, the member's compensation during the period of service in the uniformed services shall be computed at:

(A) The rate the member would have received had he or she not served in the uniformed services; or

(B) The member's average compensation level during the twelve-month period, or shorter, if applicable, immediately preceding the service.

(7) If both employee and employer contributions are not paid, the member shall not be entitled to any accrued benefits for the time served in the uniformed services.

(d) In no event shall a person be credited with a total of more than five (5) years of armed service, except that service credited under subsection (c) of this section shall be in addition to that amount.

(e) In any case of doubt as to the period of the armed service to be credited a member, the Board of Trustees of the Arkansas Teacher Retirement System shall have the power to determine the period.

(f)(1) In the case of a death occurring on or after January 1, 2007, if a member dies while performing qualified military service as defined in the Internal Revenue Code, 26 U.S.C. § 414(u)(5), as it existed on January 1, 2011, the survivors of the member are entitled to any additional benefits, including determining a member's vesting, provided under the Arkansas Teacher Retirement System as if the member had resumed and then terminated employment on account of death.

(2) Additional benefits under subdivision (f)(1) of this section do not include benefit accruals relating to the period of qualified military service.

**History.** Acts 1973, No. 427, § 5; 1979, 1989, No. 653, § 4; 1991, No. 43, § 5; No. 681, § 1; 1983, No. 619, § 5; 1983, No. 1997, No. 142, § 2; 1997, No. 739, § 1; 665, § 5; A.S.A. 1947, § 80-1440; Acts 1997, No. 1053, § 1; 1997, No. 1068, § 1; 1987, No. 518, § 1; 1989, No. 652, § 7; 2009, No. 468, § 10; 2011, No. 45, § 4;



2011, No. 69, §§ 14, 15; 2013, No. 140, § 4; 2015, No. 301, § 7; 2015, No. 558, § 1; 2019, No. 474, § 4.

**A.C.R.C. Notes.** Pursuant to § 1-2-207(b), subsection (b) is set out above as amended by Acts 2015, No. 558, § 1. Subsection (b) was also amended by Acts 2015, No. 301, § 7, to read as follows:

“(b) An active or inactive member who entered the armed forces shall have the period of armed forces service credited as service in the system without cost to the member if the member completes five (5) or more years of actual service in the system.”

### **24-7-603. Out-of-state service — Definition.**

(a) As used in this section, “out-of-state service” means service rendered in any state except Arkansas in a position that would have been covered by the Arkansas Teacher Retirement System had the service been actual service covered by the system if rendered in the state.

(b) Out-of-state service purchased before July 1, 1987, shall be credited as service under this section in accordance with provisions in force before July 1, 1987.

(c) A member shall be eligible to establish out-of-state service to be credited as service under this subchapter under the following conditions:

(1)(A) The out-of-state service credit to be granted shall be limited to service for which no benefit could be paid by another system similar in purpose to this system, except Social Security if the member had left on deposit his or her contributions to the other system.

(B) The credit under subdivision (c)(1)(A) of this section is limited to fifteen (15) years;

(2)(A) The member shall pay to the system for each year of service credit granted the actuarial equivalent of the member's benefits.

(B) The payment shall be credited to the member's account in the members' deposit account and shall be in addition to regular member contributions credited to the member's deposit account;

(3)(A) The out-of-state service shall not become credited service under this system until the member has established five (5) or more years of actual service.

(B) If a member ceases to be an active member before the out-of-state service has been established as system-credited service, the member payments made under this section shall be refundable;

(4) The benefit program to be applied to each year of service credit being granted shall be the benefit program in effect at the time of retirement; and

(5) Any other rules consistent with this subchapter as the Board of Trustees of the Arkansas Teacher Retirement System may adopt.

(d) A member may purchase a fraction of a year of out-of-state service to be credited as service under this subchapter in the same manner as provided for out-of-state service under subsection (c) of this section if the service meets the following requirements:

(1) The member has not less than one-fourth ( $\frac{1}{4}$ ) year of out-of-state credited service in the fiscal year; and

(2) The fraction of a year of out-of-state service may be credited in keeping with policies of the board under § 24-7-601.

(e) A member shall be eligible, upon application, to purchase service rendered outside the state during a period of employment with an education coordinating council to be credited as out-of-state service under the provisions of this section, provided that the conditions of subsection (c) of this section are met.

**History.** Acts 1973, No. 427, § 5; 1979, No. 681, § 1; 1981, No. 365, §§ 1, 2; 1983, No. 619, §§ 4, 5; 1983, No. 665, §§ 4, 5; 1985, No. 805, § 3; A.S.A. 1947, § 80-1440; Acts 1987, No. 118, § 1; 1989, No. 10, § 1; 1991, No. 501, § 1; 1995, No. 524, § 1; 1997, No. 142, §§ 3, 4; 1997, No. 1053, § 2; 1999, No. 110, § 1; 1999, No. 866, §§ 2, 3; 2003, No. 1473, § 57; 2005, No. 385, § 3; 2009, No. 468, § 11; 2011, No. 69, § 16; 2011, No. 974, § 4; 2019, No. 315, § 2887; 2021, No. 279, § 11.

**Amendments.** The 2019 amendment

deleted "and regulations" following "rules" in (c)(5).

The 2021 amendment substituted "A member" for "From and after July 1, 1987, an active member" in (c) in the introductory language; substituted "credited to the member's deposit account" for "thereto" in (c)(2)(B); in (c)(5), substituted "Any" for "Such" and deleted "from time to time" preceding "adopt"; and, in (d) in the introductory language and in (e), substituted "A member" for "An active member".

## 24-7-605. Service in General Assembly.

(a)(1)(A)(i) Any member of the Senate or House of Representatives of the General Assembly who is a member of the Arkansas Teacher Retirement System shall be eligible, upon application, to receive credited service and salary in the system for his or her full contract salary in the event that a cut in pay is required by the school district during his or her attendance at regular or extraordinary sessions of the General Assembly or during his or her attendance at meetings of regular or special committees of the General Assembly during the interim.

(ii) These meetings shall include, but not be limited to, the Legislative Council, the Legislative Joint Auditing Committee, the interim committees, and special legislative committees.

(B) The member shall receive credited service and salary upon payment by him or her of the necessary member contribution and upon appropriation from the Public School Fund of the necessary employer contribution for the amount of the salary reduction during periods of attending regular or extraordinary sessions of the General Assembly or sessions of legislative committees.

(2) The amount of credited salary shall not exceed the contract salary of the member for the school year contract period.

(3)(A) Any member of the House of Representatives or the Senate currently serving in the General Assembly or the legislative committees for any year prior to July 6, 1977, not to exceed five (5) years, may make application for and receive credited service and salary in the system for his or her full contract salary as an employee with respect to any reduction therein during attendance at regular or extraordinary sessions of the General Assembly or sessions of legislative committees in which he or she served.



(B) This shall be done only if he or she pays to the system the member contribution required by law, and if appropriation is made from the Public School Fund for the necessary employer contribution required by law for that portion of his or her contract salary for any period for which he or she suffered a reduction in pay during legislative service.

(b)(1) Any member of the Senate or House of Representatives of the General Assembly who is an employee and is a member of the system shall be eligible, upon application, to receive credited service and salary in the system for his or her full contract salary in the event that either the member or the school district decides it is in the best interest of the school district for the member to take a leave of absence for up to one (1) full calendar year at a time to attend to his or her duties as a General Assembly member.

(2) Service and salary shall be credited upon payment by the member of the necessary member contribution and the necessary employer contribution for the amount of the member's contract salary during periods of attending regular or extraordinary sessions of the General Assembly or sessions of legislative committees.

(3) The amount of credited salary shall not exceed the member's contract salary for the school year contract period.

**History.** Acts 1977, No. 351, § 1; 1979, No. 121, § 1; 1979, No. 313, § 1; A.S.A. 1947, §§ 80-1440.1, 80-1440.2; Acts 1989, No. 653, § 5; 1997, No. 1354, § 41; 2019, No. 427, § 10.

**Amendments.** The 2019 amendment inserted "and salary" throughout the section; and substituted "credited salary" for "credited service" in (a)(2) and (b)(3).

## **24-7-607. Private school service — Definition.**

(a) As used in this section, "private school service" means service rendered in a private school or agency that would have been covered by the Arkansas Teacher Retirement System if the service had been:

- (1) Rendered in a public school; and
- (2) The private school or agency:

(A) Has positions that would require the issuance of a teaching license in a public school based upon a determination by the Arkansas Teacher Retirement System; or

(B)(i) Is recognized as a private educationally related entity by resolution adopted by the Board of Trustees of the Arkansas Teacher Retirement System.

(ii) Private educationally related entity service purchased for employment at a private educationally related entity to obtain system-credited service is limited to five (5) years or less.

(b) A member purchasing certified private school service shall be eligible, upon application, to purchase private school service for a period not to exceed fifteen (15) years, to be credited as certified service under this subchapter under the following conditions:

(1) The private school service credit to be purchased shall be limited to service for which no benefit could be paid by another system similar

in purpose to the Arkansas Teacher Retirement System except Social Security if the member left on deposit his or her contributions to the other system;

(2)(A) The member shall pay the actuarial equivalent of benefits as set forth under § 24-7-202 to the Arkansas Teacher Retirement System for each year of private school service credit being purchased.

(B) The payment shall be credited to the member's account in the members' deposit account and shall be in addition to regular member contributions credited to the member's deposit account;

(3) The private school service shall not become credited service under the Arkansas Teacher Retirement System until:

(A) The member payment under this section has been paid in full; and

(B)(i) The member has established five (5) or more years of actual service, exclusive of private school service.

(ii) If a member ceases to be an active member before the private school service has been established as system-credited service, the member payments contributed under this section shall be refunded to the member upon request;

(4) The benefit program to be applied to each year of private school service credit and private educationally related entity service credit being purchased shall be the benefit program in effect at the time of retirement; and

(5) Any other rules consistent with this subchapter as the Board of Trustees of the Arkansas Teacher Retirement System may from time to time adopt.

(c)(1) A member is eligible to purchase noncertified private school service or private education-related entity private school service for a period of five (5) years or less that will be credited as noncertified service under this subchapter when:

(A) The member properly submits an application to purchase noncertified private school service or private education-related entity private school service;

(B) The noncertified service credit to be purchased is limited to service for which no benefit could be paid by another state-supported pension system or a system with a similar purpose when the contributions of the member were left on deposit with the other system; and

(C)(i) The member pays the actuarial equivalent of benefits as set forth under § 24-7-202 to the Arkansas Teacher Retirement System for each year of service credit being purchased.

(ii) The payment shall be credited to the member's account in the members' deposit account and shall be in addition to regular member contributions credited to the member's deposit account.

(2) The noncertified service shall not become credited service under the Arkansas Teacher Retirement System until:

(A) The member payment under this section has been paid in full; and



(B)(i) The member has established five (5) or more years of actual service in the Arkansas Teacher Retirement System.

(ii) If a member ceases to be an active member before the noncertified service has been established as system-credited service, the member payments contributed under this section shall be refunded to the member upon request.

(3) The benefit program applied to each year of private school service or private education-related entity private school service credit being purchased shall be the benefit program in effect at the time of retirement.

(4) The purchase and application of the noncertified service credit shall be subject to the rules consistent with this subchapter that the Arkansas Teacher Retirement System may adopt.

(d) A member may purchase a fraction of a year of private school service to be credited as service under this subchapter in the same manner as provided for private school service under subsection (b) of this section if the service meets the following requirements:

(1) The member has not less than one-fourth ( $\frac{1}{4}$ ) of a year of private school service in a fiscal year under § 24-7-601; and

(2) The fraction of a year of private school service may be credited in keeping with policies as provided by § 24-7-601.

**History.** Acts 1991, No. 388, § 1; 1995, No. 513, § 1; 1995, No. 524, § 2; 1997, No. 142, § 7; 1997, No. 1053, § 4; 1999, No. 110, § 2; 1999, No. 866, § 6; 2001, No. 1534, § 1; 2003, No. 1473, § 59; 2005, No. 385, § 4; 2007, No. 97, § 9; 2009, No. 468, § 12; 2011, No. 69, § 19; 2011, No. 974, § 7; 2013, No. 223, § 1; 2015, No. 90, § 1; 2019, No. 315, §§ 2888, 2889; 2021, No. 279, § 12.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (b)(5) and (c)(4).

The 2021 amendment substituted "A member" for "An active member" in the introductory paragraphs of (b)-(d); in (b)(2)(B) and (c)(1)(C)(ii), substituted "credited to the member's deposit account" for "thereto"; added "upon request" in (b)(3)(B)(ii); substituted "Any" for "Such" in (b)(5); in (c)(1) in the introductory language, in (c)(1)(A), and in (c)(3), substituted "education-related" for "educationally related"; and, in (c)(4), substituted "that" for "as" and deleted "from time to time" preceding "adopt".

## 24-7-608. Limitation on benefit enhancement.

(a) A benefit enhancement provided for by this act shall not be implemented if it would cause the publicly supported retirement system's unfunded actuarial accrued liabilities to exceed an eighteen-year amortization.

(b) A benefit enhancement provided for by this act shall not be implemented by any publicly supported system which has unfunded actuarial accrued liabilities being amortized over a period exceeding eighteen (18) years until the unfunded actuarial accrued liability is reduced to a level less than the standards prescribed by § 24-1-101 et seq.

**History.** Acts 1997, No. 1053, § 27; 2019, No. 427, § 11.

**Amendments.** The 2019 amendment substituted "A benefit enhancement pro-

vided for by this act shall not be implemented" for "No benefit enhancement provided for by this act shall be implemented" in (a) and (b); substituted "an eighteen-year amortization" for "a thirty-year amortization" in (a); and substituted "eighteen (18) years" for "thirty (30) years" in (b).

**24-7-610. Credit for service in National Guard and armed forces reserve — Definition.**

(a) As used in this section, "armed forces reserve" means one (1) of the reserve components of the United States Armed Forces.

(b)(1) A member of the Arkansas Teacher Retirement System shall be entitled to purchase credited service in the system for a period not to exceed five (5) years for service rendered by the member in the National Guard or the armed forces reserve if the member:

(A) Makes an application to the Board of Trustees of the Arkansas Teacher Retirement System;

(B) Provides proof satisfactory to the board of that person's service in the National Guard or the armed forces reserve; and

(C) Pays to the system for each year of service credit being granted the actuarial equivalent of the member's benefits.

(2) The payment shall be credited to the member's account in the members' deposit account and shall be in addition to regular member contributions.

(c) A member may purchase one (1) year of service credit for each one (1) year of service in the National Guard or armed forces reserve.

(d) The National Guard or armed forces reserve service shall not become credited service under this system until:

(1) The member payments specified in subdivision (b)(1)(C) of this section have been paid in full; and

(2) The member has established five (5) or more years of actual service in the system.

(e) Service in the National Guard or armed forces reserve service shall be credited to the year in which it was rendered even if the member has concurrent service with a covered employer.

(f) If a member ceases to be an active member before the service in the National Guard or the armed forces reserve has been established as system-credited service, the member payments contributed as specified in subdivision (b)(1)(C) of this section shall be refundable.

(g)(1) This section is supplemental to § 24-7-602, and this section does not diminish the right of a member of the system to obtain credited service in the system for active duty military service within the limits permitted by § 24-7-602.

(2) However, a member shall not be entitled to or receive in excess of five (5) years of credited service rendered by the member under this section.



**History.** Acts 2001, No. 1296, § 1; 2003, No. 1473, § 60; 2009, No. 468, § 13; 2011, No. 66, § 1; 2011, No. 69, § 20; 2019, No. 427, § 12; 2021, No. 279, §§ 13, 14.

**Amendments.** The 2019 amendment rewrote (c).

The 2021 amendment substituted "A member may purchase" for "A member may, one (1) time each fiscal year, purchase up to" in (c); inserted (e) and redesignated former (e) and (f) as (f) and (g); and made a stylistic change.

## **24-7-611. Domestic federal service — Definition.**

(a) As used in this section, "domestic federal service" means service rendered as a teacher or administrator in any school or similar institution located on a military base or installation that is administered by the United States Department of Defense.

(b) On and after January 1, 2003, a member shall be eligible upon application to purchase domestic federal service to be credited as service under this section under the following conditions:

(1) The domestic federal service credit to be granted shall be limited to service for which no benefit could be paid by a retirement system similar in purpose to the Arkansas Teacher Retirement System except Social Security if the member left on deposit his or her contributions to the other system, and it shall be limited to ten (10) years;

(2)(A) For each year of domestic federal service credit granted, the member shall pay to the system the employee and employer contributions based on the actuarial equivalent of the member's benefits.

(B) The payment is credited to the member's account in the members' deposit account and is in addition to regular member contributions;

(3) The domestic federal service shall not become credited service under this system until:

(A) The member payment under this section has been paid in full; and

(B)(i) The member has established five (5) or more years of actual service exclusive of domestic federal service.

(ii) If a member ceases to be an active member before the domestic federal service has been established as system-credited service, the member payments contributed under this section shall be refunded to the member upon request;

(4) The benefit program to be applied to each year of service credit being granted shall be the benefit program in effect at the time of retirement; and

(5) Any other rules consistent with this section that the Board of Trustees of the Arkansas Teacher Retirement System may adopt.

(c) A member may purchase a fraction of a year of domestic federal service to be credited as service under this subchapter in the manner provided for domestic federal service under subsection (b) of this section if the service meets the following requirements:

(1) The member has not less than one-fourth ( $\frac{1}{4}$ ) year of domestic federal service in a fiscal year under § 24-7-601; and

(2) The fraction of a year of domestic federal service may be credited in keeping with policies as provided by § 24-7-601.

(d) However, the board shall not implement this section until the system has reduced its unfunded actuarial accrued liabilities being amortized over a period exceeding thirty (30) years to a level less than the standards prescribed for those public retirement systems under §§ 24-1-104 and 24-1-105.

**History.** Acts 2003, No. 1479, § 1; 2009, No. 468, § 14; 2011, No. 69, § 21; 2011, No. 974, § 8; 2019, No. 315, § 2890; 2021, No. 279, § 15.

**Amendments.** The 2019 amendment deleted “and regulations” following “rules” in (b)(5).

The 2021 amendment, in the introductory language of (b) and (c), substituted “a member” for “an active member”; added “upon request” in (b)(3)(B)(ii); and, in (b)(5), substituted “Any” for “The” and “that” for “as” and deleted “from time to time” preceding “adopt”.

## 24-7-612. Service credit purchase.

(a) A member who purchases service credit in the Arkansas Teacher Retirement System shall pay the actuarial equivalent of both the employee and employer contributions, as calculated by the system.

(b)(1) If a member has an existing service purchase account with the system before July 1, 2011, the member shall pay the balance of the account to the system according to the payment schedule agreed upon by the member and the system.

(2) The member shall agree to a reasonable payment schedule with the system on or before June 30, 2012, or the member payments, if any, shall be returned to the member by the system without interest on the member payments as allowed by law.

(3) The service purchase account shall be closed after the system has returned the member payments.

(c) Beginning July 1, 2011, service purchase accounts shall not be created for the purchase of service credit in the system.

(d) The Board of Trustees of the Arkansas Teacher Retirement System may promulgate rules regarding service purchase accounts consistent with this section.

(e) All payments for service credit purchases shall be received by the system before the member's first annuity installment or T-DROP deposit occurs.

**History.** Acts 2011, No. 69, § 13; 2021, No. 279, § 16.

**Amendments.** The 2021 amendment added (e).

## SUBCHAPTER 7 — ARKANSAS TEACHER RETIREMENT SYSTEM — BENEFITS

### SECTION.

- 24-7-701. Voluntary retirement.
- 24-7-702. Early voluntary retirement.
- 24-7-704. Disability retirement.
- 24-7-705. Life annuity.
- 24-7-706. Annuity options.

### SECTION.

- 24-7-708. Employment of retired members by covered employers.
- 24-7-709. Disposition of member contributions — Residue.
- 24-7-710. Survivor annuity benefits.



## SECTION.

- 24-7-711. Refund of member contributions upon termination.
- 24-7-713. Retirement annuity — Simple cost of living adjustment and monthly benefit stipend — Definition.
- 24-7-715. Benefit rights not subject to legal process — Definition.
- 24-7-716. [Repealed.]
- 24-7-718. Minimum financial conditions for benefit increases.
- 24-7-719. Rollover of distributions — Definitions.
- 24-7-720. Lump-sum benefit — Definition.
- 24-7-725. Limitation on benefit enhancement of § 24-7-702.

## SECTION.

- 24-7-727. Compounded cost of living adjustments.
- 24-7-728. Computation of benefits based on life annuity.
- 24-7-730. Required distributions.
- 24-7-733. Limitation on benefits.
- 24-7-735. Contract buyout agreement — Settlements — Judgments — Calculation of benefits.
- 24-7-736. Calculation of final average salary — Definition.
- 24-7-738. Return to regular covered employment for service credit after disability retirement — Alternate option to return to disability retirement — Incentive to work.

**Effective Dates.** Acts 2015, No. 87, § 2: July 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System, a state agency created by the General Assembly for the purpose of providing retirement benefits to school employees of the state, operates on a fiscal year of July 1 to June 30; that having an effective date of July 1, 2015, is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures herein; that such revisions and updating are of great importance for actuarial purposes and to protect the benefits to members of the Arkansas Teacher Retirement System; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015."

Acts 2015, No. 219, § 2: July 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act are in need of revising and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System, a state agency created by the General Assembly

ment System Act are in need of revising and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System, a state agency created by the General Assembly for the purpose of providing retirement benefits to school employees of the state, operates on a fiscal year of July 1 to June 30; that having a July 1, 2015, effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures herein; that such revisions and updating are of great importance for actuarial purposes and to protect the benefits to members of the Arkansas Teacher Retirement System; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015."

Acts 2015, No. 225, § 2: July 1, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System, a state agency created by the General Assembly

for the purpose of providing retirement benefits to school employees of the state, operates on a fiscal year of July 1 to June 30; that having a July 1, 2015, effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures herein; that such revisions and updating are of great importance for actuarial purposes and to protect the benefits to members of the Arkansas Teacher Retirement System; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall become effective on or before July 1, 2015."

Acts 2015, No. 301, § 11: Mar. 4, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of clarification to operate the system efficiently and effectively; that such clarification is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2015, No. 375, § 3: Mar. 11, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able to meet the needs of its members as an-

ticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to operate the system efficiently and effectively; that such revision and updating are of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 199, § 2: Feb. 17, 2017. Emergency clause provided: "It is found and determined by the General Assembly that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."



Acts 2017, No. 243, § 5: Feb. 21, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 293, § 9: Feb. 28, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an

emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 436, § 4: Mar. 9, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 505, § 5: Mar. 15, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of

revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 549, § 9: Mar. 21, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approved by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 551, § 2: Mar. 21, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 611, § 3: Mar. 23, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an



emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 750, § 3: Mar. 30, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 780, § 3: Mar. 31, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of

revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 782, § 4: Mar. 31, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor

and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 209, § 3: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures referenced in this act; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

Acts 2019, No. 210, § 2: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures referenced in this act; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and

that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

Acts 2019, No. 427, § 23: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions of this act to begin on the first day of the fiscal year and to provide for the proper administration of the Arkansas Teacher Retirement System; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

Acts 2019, No. 595, § 4: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act which created the Arkansas Teacher Retirement System as a state agency for the purpose of providing retirement benefits to school employees in Arkansas, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that having a July 1, 2019 effective date is necessary to allow the provisions of this act to take effect on the first day of the



fiscal year in order to facilitate the proper administration of the Arkansas Teacher Retirement System; that revisions and updates to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and to protect member benefits; and that this act is necessary to maintain an orderly system of managing member benefits offered by the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 279, § 38: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by

the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

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## **24-7-701. Voluntary retirement.**

(a)(1)(A) Except as provided under subdivision (a)(2) of this section, an active member who either attains sixty (60) years of age and has five (5) or more years of actual and reciprocal service or who has twenty-eight (28) or more years of credited service regardless of age may voluntarily retire upon written application filed with the Arkansas Teacher Retirement System.

(B) If a member fails to submit a complete retirement application within six (6) calendar months after the effective date of benefits, including all additional documentation required by the system, the application shall be void unless an extension has been granted by the system.

(2)(A) A member shall meet the termination of covered employment requirements under § 24-7-502 to be eligible for retirement unless the member has attained normal retirement age.

(B) A member who fails to meet the termination of employment requirements of this subsection shall have his or her retirement benefits cancelled and forfeits any retirement benefits until the termination requirements are met.

(C)(i) A member who fails to meet the termination requirements of this section and has received retirement benefits from the system shall repay the benefits to the system before becoming eligible again for voluntary retirement.

(ii) The system may adjust and collect any benefits that have been overpaid to a member under § 24-7-205.

(D) A member who fails to meet the termination requirements of this section upon employment by a covered employer shall return to active member status under § 24-7-502.

(b) Upon a member's retirement, he or she or she shall receive a life annuity as provided for in § 24-7-705.

(c) The annuity shall begin the first day of the calendar month next following the latest of:

(1) One (1) month after the date the written application is filed with the Board of Trustees of the Arkansas Teacher Retirement System;

(2) The member's termination of covered employment;

(3) The member's attainment of the minimum age; or

(4) The member's completion of the minimum years of credited service.

(d) If a member has accrued a full year of service credit for a fiscal year, the annuity shall not begin earlier than on July 1 after the fiscal year ends unless the board adopts by rule or resolution an earlier beginning date for all members whose retirement will not result in a reduction of classroom teachers.

(e)(1) A member may cancel an application for voluntary retirement benefits up to two (2) calendar months after the effective date of benefits.

(2) The member shall notify the system of cancellation in writing. Upon cancellation, the member shall be eligible for active membership in the system.

**History.** Acts 1973, No. 427, § 9; 1979, No. 681, § 5; 1983, No. 17, § 1; A.S.A. 1947, § 80-1443; Acts 1993, No. 1091, § 2; 1995, No. 282, § 1; 1997, No. 992, § 1; 1997, No. 1053, § 5; 2001, No. 461, § 2; 2007, No. 97, § 10; 2009, No. 468, § 15; 2009, No. 743, § 2; 2011, No. 45, §§ 5, 6; 2013, No. 720, § 1; 2019, No. 595, § 2; 2021, No. 279, §§ 17, 18.

**Amendments.** The 2019 amendment

rewrote (d); deleted former (e); and redesignated former (f) as (e).

The 2021 amendment substituted "covered employment" for "active membership" in (c)(2), and, in (d), deleted "the" preceding "July 1" and added "ends unless the board adopts by rule or resolution an earlier beginning date for all members whose retirement will not result in a reduction of classroom teachers".

## **24-7-702. Early voluntary retirement.**

(a)(1)(A) Except as provided under subdivision (a)(2) of this section, an active or inactive member who has a combined total of twenty-five (25) or more years of actual and reciprocal service, including purchased or free credited service, but has not attained sixty (60) years of age and is not eligible for retirement under § 24-7-701 may voluntarily retire early by filing a written application with the Board of Trustees of the Arkansas Teacher Retirement System.

(B) If a member fails to submit a complete retirement application within six (6) calendar months of the effective date of benefits, including all additional documentation required by the Arkansas Teacher Retirement System, the application shall be void unless an extension is granted by the system.



(2)(A) A member shall meet the termination of covered employment requirements under § 24-7-502 to be eligible for retirement except if the member has attained normal retirement age.

(B) A member who fails to meet the termination of covered employment requirements under this subsection shall have his or her retirement benefits cancelled and forfeits any retirement benefits until the termination requirements are met.

(C)(i) A member who fails to meet the termination requirements of this section and has received retirement benefits from the system shall repay the benefits to the system before becoming eligible again for voluntary retirement.

(ii) The system may adjust and collect any benefits that have been overpaid to a member under § 24-7-205.

(D) A member who fails to meet the termination requirements of this section upon employment by a covered employer shall return to active member status under § 24-7-502.

(b)(1) Upon an active or inactive member's retirement as provided in this section, the member shall receive, in lieu of any other system benefit, an early annuity that shall be a certain percent of an annuity provided for in § 24-7-705.

(2)(A) The percent shall be one hundred percent (100%) reduced by between five-twelfths percent ( $\frac{5}{12}\%$ ) and fifteen-twelfths percent ( $\frac{15}{12}\%$ ) multiplied by the number of months by which the time of early retirement precedes the earlier of either completion of twenty-eight (28) years of credited service or attainment of sixty (60) years of age.

(B) The board may set by board resolution the early annuity reduction under subdivision (b)(1) of this section at a percentage rate between five percent (5%) per year and fifteen percent (15%) per year, to be prorated monthly, if the:

(i) System's actuary certifies to the board that the amortization period to pay the unfunded liabilities of the system exceeds eighteen (18) years; and

(ii) Board determines that a reduction in the cost of early voluntary retirement is prudent to maintain actuarial soundness.

(3)(A) Effective July 1, 1997, the annuities of those members who chose early retirement when the years of service required for an unreduced annuity was thirty-five (35) or more years shall be adjusted to reflect the amount for which they would have been entitled had the number of years to retire with an unreduced annuity been thirty (30) years on the effective date of their retirement.

(B) The annuities of those members who chose early retirement from July 1, 1995, through June 30, 1999, who received an early annuity as provided in § 24-7-702 that was in effect at the time of their retirement, shall be adjusted effective July 1, 1999, to reflect a percent of the annuity as provided in subdivision (b)(2) of this section.

(C) Effective July 1, 2001, the annuities of those members who chose early retirement when the years of service required for an

unreduced annuity was thirty (30) or more years shall be adjusted to reflect the amount for which they would have been entitled had the number of years to retire with an unreduced annuity been twenty-eight (28) years on the effective date of their retirement, and the annuities of those members shall be adjusted effective July 1, 2001, to reflect a percent of the annuity as provided in subdivision (b)(2) of this section, which was in effect July 1, 1999.

(4) The adjustments described in subdivision (b)(3) of this section shall not be retroactive to the effective date of the member's retirement.

(c) For an active member, the annuity shall begin the first day of the calendar month next following the latest of:

(1) One (1) month after the date the written application is filed with the board;

(2) The member's termination of covered employment; or

(3) The member's completion of the required credited service.

(d) For an inactive member, the annuity shall begin the first day of the calendar month after the date his or her written application is received by the board.

(e) If a member has accrued a full year of service credit for a fiscal year, the annuity shall not begin earlier than on July 1 after the fiscal year ends unless the board adopts by rule or resolution an earlier beginning date for members whose retirement will not result in a reduction of classroom teachers.

(f)(1) A member may cancel an application for early voluntary retirement benefits up to two (2) calendar months after the effective date of benefits.

(2) The member shall notify the system of cancellation in writing. Upon cancellation, the member shall be eligible for active membership in the system.

**History.** Acts 1973, No. 427, § 9; 1975, No. 549, § 9; 1981, No. 365, § 6; 1983, No. 17, § 2; A.S.A. 1947, § 80-1443; Acts 1993, No. 1091, § 3; 1995, No. 282, § 2; 1997, No. 992, § 2; 1997, No. 1074, § 1; 1999, No. 1521, § 1; 2001, No. 461, § 3; 2001, No. 1300, § 1; 2005, No. 385, § 5; 2007, No. 97, § 11; 2009, No. 468, § 16; 2009, No. 743, § 3; 2011, No. 45, §§ 7, 8; 2013, No. 720, § 2; 2017, No. 293, § 3; 2017, No. 750, § 1; 2019, No. 595, § 3; 2021, No. 279, §§ 19–21.

**Amendments.** The 2017 amendment by No. 293 rewrote (a)(1)(A).

The 2017 amendment by No. 750 added (b)(2)(B).

The 2019 amendment rewrote (e); deleted former (f); and redesignated former (g) as (f).

The 2021 amendment, in (b)(2)(A), inserted "between" and "and fifteen-twelfths percent (15/12%)"; substituted "covered employment" for "active membership" in (c)(2); and, in (e) deleted "the" preceding "July 1" and added "ends unless the board adopts by rule or resolution an earlier beginning date for members whose retirement will not result in a reduction of classroom teachers".

## 24-7-704. Disability retirement.

(a)(1)(A) An active member in employer service with five (5) or more years of actual and reciprocal service who becomes totally and permanently physically or mentally incapacitated for his or her job



duties as a result of a personal injury or disease may be retired by the Board of Trustees of the Arkansas Teacher Retirement System upon a determination of disability consistent with this section and approval of a written application filed with the Arkansas Teacher Retirement System.

(B) An active member who is eligible for retirement under § 24-7-701 is not eligible for disability retirement.

(C)(i) An active member who has met the eligibility requirement of subdivision (a)(1)(A) of this section shall meet the termination of covered employment requirements under § 24-7-502 to be eligible for disability retirement benefits.

(ii) For eligibility under this section, a member is considered active for an additional fiscal year following the last fiscal year that the member renders actual service to a covered employer and obtains at least one-fourth ( $\frac{1}{4}$ ) year of service credit.

(iii) Service credit used in calculating any benefits paid under this section means days of service, including paid sick leave covered by the employer.

(D)(i) A member has six (6) calendar months from the date of his or her application for disability retirement to submit a completed application and accompanying documentation.

(ii) If a member does not provide all accompanying documentation requested by the system within the six (6) calendar months, the system shall:

(a) Submit the application to the medical committee for review as complete; or

(b) Withdraw the application at the request of the member unless an extension is granted by the system.

(E) The member is qualified to receive disability retirement benefits if, by majority opinion, the medical committee reports to the board in writing that upon review of the member's application and accompanying documentation the medical committee finds:

(i) The member is physically or mentally incapacitated;

(ii) The member exhibits symptoms of physical or mental incapacitation while the member is employed by a system employer as an active member;

(iii) The member is unable to perform his or her current work duties;

(iv) The incapacity will most likely be permanent; and

(v) The member should be retired.

(F) A favorable determination letter from the Social Security Administration finding that the member is unable to perform his or her current work duties shall create a rebuttable presumption that the member qualifies to receive disability retirement benefits.

(G) If the medical committee requests additional documentation upon initial review, a member has six (6) calendar months from the date of a medical committee request to submit any additional accompanying documentation unless an extension is granted by the system.

(H)(i) If the medical committee finds that a member is not qualified to receive disability benefits, the member may request a second review provided the member submits additional medical documentation.

(ii) A second review may be requested one (1) time.

(iii) The member has six (6) calendar months to submit additional medical documentation unless an extension is granted by the system.

(2) The disability retirement is effective from the date the written application is filed with the system and the member is no longer employed by an employer.

(3)(A) Upon finding a member qualified to receive disability retirement benefits, the member shall submit all documents and election forms required to begin annuity payments including without limitation tax withholdings, direct deposit, and choice of option, if any.

(B) If a member does not submit the required documents within six (6) calendar months after the date on which the medical committee finds that the member qualifies to receive disability benefits, the member's application shall be void unless an extension has been granted by the system.

(4) To begin receiving disability retirement, a member shall not:

(A) Be employed by a system-covered employer; or

(B) Be indirectly employed by or through an independent contractor, limited liability company, partnership, corporation, or legal entity that is employed by a system-covered employer if the member has substantial control of the employer-employee relationship, including without limitation the ability to negotiate rates of pay with the system-covered employer or assign work and work hours to the member.

(b)(1) Upon disability retirement as provided in subsection (a) of this section, a retiree shall receive an annuity provided for in § 24-7-705 and shall have the right to elect an option provided for in § 24-7-706.

(2) In addition to the requirements of this subsection, the member's disability retirement is subject to the provisions of subsection (c) of this section.

(3)(A) A disability retiree may continue to receive a disability retirement benefit under this section when the disability retiree provides the system with a Social Security Administration determination letter finding the disability retiree is unable to perform his or her work duties as described in subdivision (a)(1)(E)(iii) of this section within thirty-six (36) months from:

(i) July 1, 2015, when the disability retiree's disability retirement effective date is before July 1, 2015; or

(ii) The effective date of disability retirement when the disability retiree's disability retirement effective date is on or after July 1, 2015.

(B) The disability retiree may apply for an extension of the thirty-six-month deadline when:

(i) The disability retiree can demonstrate through an administrative or judicial confirmation of an active Social Security Administra-



tion disability claim that the claim is still under review and is a part of a continuous claim without voluntary dismissal or withdrawal; and

(ii) The Social Security Administration disability claim was filed and remained active for at least twenty-four (24) months prior to the thirty-six-month deadline under subdivision (b)(3)(A) of this section.

(C) The system shall terminate disability retirement benefits to a disability retiree when the disability retiree fails to:

(i) Provide a Social Security Administration determination letter finding that the disability retiree is unable to perform his or her former work duties as described in subdivision (a)(1)(E)(iii) of this section to the system within the thirty-six-month period under subdivision (b)(3)(A) of this section;

(ii) Receive an extension of time under subdivision (b)(3)(B) of this section to provide the system with a letter from the Social Security Administration finding that the disability retiree is unable to perform his or her former work duties as described in subdivision (a)(1)(E)(iii) of this section; or

(iii) Apply for a review by the system's medical committee within three (3) months of disability benefits ceasing due to the lack of a Social Security Administration determination letter finding that the disability retiree is unable to perform his or her former work duties as described in subdivision (a)(1)(E)(iii) of this section.

(D)(i) A disability retiree who seeks and fails to receive a determination letter finding the disability retiree is unable to perform his or her former work duties as described in subdivision (a)(1)(E)(iii) of this section by the Social Security Administration may seek a review permitted under subdivision (b)(3)(C)(iii) of this section no earlier than three (3) months before the date on which the member's disability retirement would otherwise end and no later than three (3) months after termination of disability retirement.

(ii) The system's medical committee shall hear all applications for review permitted under subdivision (b)(3)(C)(iii) of this section and render decisions consistent with the definition of disability under subdivision (a)(1)(E) of this section.

(iii) The medical committee's recommendation after its review of an application permitted under subdivision (b)(3)(C)(iii) of this section shall be presented to the board for a final order.

(iv) After receiving the medical committee's recommendation under subdivision (b)(3)(D)(iii) of this section, the board shall issue a final order consistent with the provisions of this chapter and the system's rules for initial disability retirement.

(v) The board's approval of the medical committee's recommendation shall be a final disposition of the matter by the system under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) [Repealed.]

(c)(1)(A) If a disability retiree returns to covered employment before attaining sixty (60) years of age, his or her disability retirement shall terminate unless the retiree meets the requirements to return to covered employment under subsection (d) of this section.

(B) If a disability retiree returns to covered employment after attaining sixty (60) years of age and is otherwise eligible for retirement under § 24-7-707, the retiree shall be treated as if he or she retired under § 24-7-701.

(2)(A) Except as provided in subsection (d) of this section, if a disability retiree under sixty (60) years of age returns to covered employment, he or she shall become an active member of the system immediately, and his or her credited service at the time of his or her disability retirement shall be restored to his or her credit in the members' deposit account.

(B) The retiree's disability retirement and his or her accumulated contributions shall be treated as if he or she returned to service on the date of the full-time employment.

(3) Except as provided under subdivision (c)(2) of this section, a disability retiree shall not earn or be given service credit for the period he or she was receiving a disability retirement annuity.

(d)(1) A disability retiree may be employed by a covered employer and also receive a monthly disability retirement if the disability retiree provides the covered employer with less than eighty (80) days of actual service during a fiscal year.

(2)(A) A disability retiree who meets the requirements of this subsection shall continue to receive his or her monthly disability retirement annuity from the system and shall not accrue additional service credit.

(B) A covered employer who employs a disability retiree under this subsection shall remit contributions on all salary paid to the disability retiree in an amount equal to the employer contribution rate applicable to an active member.

**History.** Acts 1973, No. 427, § 9; 1977, No. 541, § 7; 1979, No. 681, § 8; A.S.A. 1947, § 80-1443; Acts 1997, No. 1053, § 6; 2001, No. 461, § 4; 2005, No. 385, § 6; 2007, No. 487, § 1; 2009, No. 468, § 17; 2009 No. 743, §§ 4, 5; 2011, No. 45, § 9; 2011, No. 137, § 1; 2011, No. 973, § 1; 2013, No. 493, § 1; 2015, No. 219, § 1; 2017, No. 549, §§ 1-7; 2019, No. 209, §§ 1, 2; 2021, No. 223, § 1.

**Amendments.** The 2017 amendment, in (a)(1)(A), inserted "and reciprocal" and substituted "duties as a result" for "duties as the result"; substituted "begin receiving" for "receive" in (a)(4); substituted "shall" for "will" in the introductory language of (b)(3)(C); added (b)(3)(C)(iii); added (b)(3)(D); repealed (b)(4); rewrote (c); added new (e); and made stylistic changes.

The 2019 amendment, in (c)(1)(A), substituted "retiree" for "retirant" twice, and

deleted "or obtains a waiver" following "covered employment"; and rewrote (e).

The 2021 amendment inserted (a)(1)(D); redesignated former provisions of (a)(1)(D) as (a)(1)(E); in (a)(1)(E), substituted "upon review" for "its review" and inserted the second occurrence of "the medical committee"; added (a)(1)(F)-(H); rewrote (a)(3); substituted "retiree" for "retirant" in (b)(1); substituted "subsection (c)" for "subsections (c) and (d)" in (b)(2); substituted "disability retiree" for "member or retirant" and made similar changes and updated internal references throughout (b)(3); substituted "unable to perform his or her work duties as described in subdivision (a)(1)(E)(iii) of this section" for "disabled" in the introductory language of (b)(3)(A) and in (b)(3)(C)(i) through (b)(3)(C)(iii); substituted "disability retiree is unable to perform his or her former work duties as described in subdivi-



vision (a)(1)(E)(iii) of this section" for "member or retirant disabled" in (b)(3)(D)(i); substituted "retiree" for "retirant" and made similar changes throughout (c); substituted "subsection (d)" for "subsection (e)" in (c)(1)(A); added "Except as provided in subsection (d) of this section" in (c)(2)(A); and deleted former (d) and redesignated former (e) as (d).

### **24-7-705. Life annuity.**

(a)(1)(A)(i) For a member who is retired or who is in the Teacher Deferred Retirement Option Plan as of June 30, 2013, the multipliers used at the time of retirement or entry into the Teacher Deferred Retirement Option Plan shall remain the multipliers used to calculate the member's retirement benefits for retirement or the Teacher Deferred Retirement Option Plan.

(ii) For all service earned through June 30, 2013, by a member who is active or inactive on June 30, 2013, he or she shall receive a straight life annuity equal to his or her number of years of credited service for which member contributions were made as provided in § 24-7-406 multiplied by two and fifteen-hundredths percent (2.15%) of his or her final average salary, or a straight life annuity equal to his or her number of years of credited service rendered after June 30, 1986, for which no member contributions were made as provided in § 24-7-406 multiplied by one and thirty-nine hundredths percent (1.39%) of his or her final average salary, or a combination of both.

(B)(i) The multipliers in this section shall be determined in accordance with this chapter and the rules and resolutions of the Board of Trustees of the Arkansas Teacher Retirement System as is actuarially appropriate for the Arkansas Teacher Retirement System.

(ii) Before increasing a benefit as provided in this section, the board shall file relevant information concerning the actuarial appropriateness of the action with the Joint Committee on Public Retirement and Social Security Programs.

(2)(A) For a member contributing on only the first seven thousand eight hundred dollars (\$7,800) of each annual salary after June 30, 1969, each annual salary used in computing his or her final average salary shall be limited to a maximum of seven thousand eight hundred dollars (\$7,800).

(B) The limit shall apply to his or her total credited service.

(3) For a member retiring with benefits to be computed on both contributory and noncontributory service under this subsection and free military service first credited after July 1, 1986, under § 24-7-602, the amount of military service to be used in the computation of benefits under this subsection shall be prorated on the ratio of membership service under each plan to his or her total membership service, notwithstanding the fact that some of the military service shall be credited as noncontributory service before July 1, 1986.

(4) All purchased military service, all out-of-state service credited under § 24-7-603, and all overseas service credited under § 24-7-604 shall be counted as contributory service, and benefits based on this

service shall be computed using the contributory percent of final average salary set forth in this subsection.

(b)(1) The multiplier on service credit earned shall remain two and fifteen hundredths percent (2.15%) for contributory service and one and thirty-nine hundredths percent (1.39%) for noncontributory service unless the rates are adjusted by the board.

(2) The board may adjust the multiplier for contributory service rendered after June 30, 2013, as follows:

(A) The multiplier rate for contributory service set by the board shall remain in effect unless adjusted by the board;

(B) The multiplier rate for contributory service shall not be less than one and seventy-five hundredths percent (1.75%) or higher than two and fifteen hundredths percent (2.15%);

(C) An increase or decrease to a multiplier rate for contributory service shall apply to a complete fiscal year;

(D) The multiplier rate for contributory service may be adjusted by resolution adopted by the board at a board meeting;

(E) Once a multiplier rate for contributory service is earned in a fiscal year, the multiplier rate may be subject to an increase but not a decrease if adopted by the board;

(F) The board may leave the multiplier rate for contributory service earned in previous years in effect even if the multiplier rate for contributory service is increased for future years;

(G) The board may set a special contributory multiplier rate for the first ten (10) years of service credit as follows:

(i) The multiplier rate for contributory service shall not be less than one and seventy-five hundredths percent (1.75%) or higher than two and fifteen hundredths percent (2.15%);

(ii) The multiplier rate for contributory service used for the first ten (10) years of service shall not be higher than the multiplier rate for subsequent years of service; and

(iii) After a member earns ten (10) years of credited service, the board may increase the multiplier rate earned in the first ten (10) years to the standard multiplier rate for contributory service for all or part of the first ten (10) years of service.

(3) The board may adjust the multiplier rate for noncontributory service for all service rendered after June 30, 2013, as follows:

(A) The multiplier rate for noncontributory service set by the board shall remain in effect unless adjusted by the board;

(B) The multiplier rate for noncontributory service shall not be less than five-tenths of one percent (0.5%) or higher than one and thirty-nine hundredths percent (1.39%);

(C) An increase or decrease to a multiplier rate for noncontributory service shall apply to a complete fiscal year;

(D) The multiplier rate for noncontributory service may be adjusted by resolution adopted by the board at a board meeting;

(E) Once a multiplier rate for noncontributory service is earned in a fiscal year, the multiplier rate may be subject to an increase but not a decrease if adopted by the board;



(F) The board may leave the multiplier rate for noncontributory service earned in previous years in effect even if the multiplier rate for noncontributory service is increased for future years;

(G) The board may set a special noncontributory multiplier rate for the first ten (10) years of service credit as follows:

(i) The multiplier rate for noncontributory service used for the first ten (10) years of service shall not be higher than the multiplier rate for subsequent years of service; and

(ii) After a member earns ten (10) years of credited service, the board may increase the multiplier rate earned in the first ten (10) years to the standard multiplier rate for noncontributory service for all or part of the first ten (10) years of service.

(4) A lower multiplier rate set by the board for contributory service and noncontributory service earned in the first ten (10) years of service shall not be retroactively applied.

(5) The board shall not reduce the multiplier rate for contributory service earned after the first ten (10) years of service unless the:

(A) System's actuary certifies to the board that the amortization period to pay the unfunded liabilities of the system exceeds eighteen (18) years; and

(B) Board determines that a reduction in the multiplier rate for contributory service is prudent to maintain actuarial soundness.

(c) For all service credit earned by a member after June 30, 2013, he or she shall receive a straight life annuity equal to his or her number of years of credited service multiplied by his or her final average salary as follows:

(1) Credited service for which member contributions were made under § 24-7-406 shall be multiplied by the contributory multiplier in effect for each fiscal year;

(2) Credited service rendered after June 30, 1986, for which no member contributions were made under § 24-7-406 shall be multiplied by the noncontributory multiplier in effect for each fiscal year; and

(3) If the member has accrued both contributory service and noncontributory service, the member's service shall be combined after calculating each amount under this subsection.

(d) Upon a member's retirement, as provided in this act, he or she shall have the right to elect an option provided for in § 24-7-706.

(e) A member retiring before July 1, 1987, shall receive an annuity in accordance with provisions of law in force before July 1, 1987.

**History.** Acts 1973, No. 427, § 9; 1975, No. 549, §§ 6-13; 1977, No. 541, §§ 5-8; 1977, No. 640, §§ 1, 2; 1977, No. 727, § 1; 1979, No. 681, §§ 5-12; 1979, No. 776, §§ 1, 2; 1981, No. 14, § 1; 1981, No. 365, §§ 6, 7; 1981, No. 435, § 2; 1983, No. 17, § 2; 1983, No. 127, § 2; 1983, No. 619, §§ 9-11; 1983, No. 665, §§ 9-11; 1985, No. 504, § 3; A.S.A. 1947, § 80-1443; Acts 1987, No. 802, § 1; 1989, No. 652, § 9; 1991, No. 44, §§ 1, 2; 1993, No. 435, § 7; 1995, No. 542, § 6; 1997, No. 992, § 3; 1997, No. 1053, § 7; 1999, No. 221, § 1; 1999, No. 396, § 1; 2003, No. 853, § 1; 2013, No. 966, § 1; 2017, No. 293, § 4; 2017, No. 551, § 1.

**Amendments.** The 2017 amendment by No. 293, in (a)(1)(B)(i), substituted

“multipliers” for “percentages” and substituted “this chapter and the rules and resolutions” for “rules, and regulations”.

The 2017 amendment by No. 551 wrote (b)(5).

### **24-7-706. Annuity options.**

(a)(1) Before the date the first payment of his or her annuity becomes due, a member may elect to receive his or her annuity as a straight life annuity, or he or she may elect to receive the actuarial equivalent, at that time, of his or her straight life annuity in a reduced annuity payable throughout his or her life.

(2) The member may nominate a beneficiary, in accordance with one (1) of the following options:

(A) Option A — 100% Survivor Annuity.

(i) Under Option A, upon the death of a retirant, his or her reduced annuity shall be continued throughout the life of and paid to such person as he or she shall have nominated by written designation executed and filed with the Board of Trustees of the Arkansas Teacher Retirement System before the date the first payment of his or her annuity becomes due.

(ii) The person designated as a beneficiary by the retirant shall be:

(a) The retirant's spouse for not less than one (1) year immediately preceding the first payment due date; or

(b) A dependent child of the retirant who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction;

(B) Option B — 50% Survivor Annuity.

(i) Under Option B, upon the death of a retirant, one-half ( $\frac{1}{2}$ ) of his or her reduced annuity shall be continued throughout the life of and paid to such person as he or she has nominated by written designation executed and filed with the board before the date the first payment of his or her annuity becomes due.

(ii) The person designated as a beneficiary by the retirant shall be:

(a) The retirant's spouse for not less than one (1) year immediately preceding the first payment due date; or

(b) A dependent child of the retirant who has been adjudged physically or mentally incapacitated by a court of competent jurisdiction; or

(C) Option C — Annuity for Ten (10) Years Certain and Life Thereafter.

(i) Under Option C, a retirant shall receive a reduced annuity payable throughout his or her life with the provision that if he or she dies before he or she has received one hundred twenty (120) monthly annuity payments, the payments shall be continued for the remainder of the period of one hundred twenty (120) months and paid to such persons in equal shares as the retirant has nominated by written designation executed and filed with the board.

(ii) If the designated beneficiaries predecease the retirant, the retirant may nominate successor beneficiaries or may elect to return



to his or her single lifetime benefit equivalent by written designation executed and filed with the board, to be effective the month following receipt of his or her election by the Arkansas Teacher Retirement System.

(iii)(a) If the designated beneficiary is the spouse of the retirant and the marriage ends in divorce or other marriage dissolution, the retirant may:

(1) Nominate a successor beneficiary; or

(2) Elect to return to his or her single lifetime benefit equivalent.

(b) The nomination or election made under subdivision (a)(2)(C)(iii)(a) of this section shall be in writing, executed by the retirant, and filed with the board, to be effective the month following receipt of his or her election by the system.

(iv) If no designated beneficiary survives the retirant, the annuity reserve for the remainder of the annuity payments shall be paid to the retirant's estate.

(v) If the last designated beneficiary receiving annuity payments dies before all annuity payments are made, the annuity reserve for the remainder of the annuity payments shall be paid to the beneficiary's estate.

(vi) Effective the month following completion of the one-hundred-twenty-month period, the retirant's annuity shall return to his or her single lifetime benefit equivalent.

(3) In addition to the persons eligible to be designated as a beneficiary under either Option A or Option B in subdivision (a)(2) of this section, the board may promulgate rules concerning the addition of classes of eligible persons to be designated as a beneficiary under this section and for the rights of option beneficiaries of deceased disability retirees under § 24-7-704.

(b)(1)(A) If a member's marital status changes after retirement due to the death of the member's spouse, or a divorce or marriage dissolution from the member's spouse who is also the member's designated beneficiary, then the member may elect to cancel any optional plan designating the former spouse as a beneficiary.

(B) A member's election under subdivision (b)(1)(A) of this section shall cause the member to return to his or her lifetime benefit equivalent, to be effective the month following the system's receipt of the approved form.

(2) A retirant who is receiving a single lifetime benefit and who marries after retirement may elect to cancel his or her single lifetime benefit and may elect an annuity providing continuing lifetime benefits to his or her spouse under rules promulgated by the board.

(c) If a member fails to elect an option, his or her annuity shall be paid to him or her as a straight life annuity.

(d)(1) Notwithstanding anything contained in this section to the contrary, the residue beneficiary under § 24-7-709 may elect to cancel the form of annuity in effect and elect Option A — 100% Survivor Annuity upon the death of a retirant on or after July 1, 1989, if:

(A) The retirant died within one (1) year following the effective date of retirement;

(B) The retirant was receiving a straight life annuity; and

(C) The residue beneficiary otherwise qualifies for an Option A — 100% Survivor Annuity.

(2) The election to change may be made only one (1) time and shall be on a form approved by the system.

(3) The election form must be received by the system within one hundred twenty (120) days of the death of the retiree.

(e)(1) Notwithstanding anything in this section to the contrary, a retirant who retired on or after July 1, 1994, may elect to cancel his or her election made at retirement for receiving an annuity and elect another option, provided that he or she:

(A) Does so within one (1) year after July 1, 1995, or within one (1) year of retirement;

(B) Files with the system a new election form approved by the system; and

(C)(i) Repays to the system the difference between the amount of the annuity received when he or she retired and the new annuity due as a result of the election change, plus interest from July 1, 1994, or his or her retirement date, whichever is later, to the date of payment in full.

(ii) The difference shall be calculated retroactively to July 1, 1994, or his or her retirement date, whichever is later.

(2) The election to change shall be made only one (1) time.

(3) The election change shall be effective retroactively to the effective date of his or her annuity.

(f) The board shall:

(1) Promulgate rules as necessary to administer this section; and

(2) Institute fair procedures for members of the system, including without limitation:

(A) Requirements for designating a beneficiary; and

(B) Spousal election.

**History.** Acts 1973, No. 427, § 9; 1977, No. 541, § 5; 1979, No. 681, § 7; 1983, No. 619, § 10; 1983, No. 665, § 10; A.S.A. 1947, § 80-1443; Acts 1991, No. 51, § 1; 1995, No. 528, § 1; 1999, No. 395, §§ 1, 2; 1999, No. 866, § 7; 2005, No. 385, § 7;

2007, No. 97, § 12; 2011, No. 137, § 2; 2011, No. 557, § 1; 2015, No. 301, § 8; 2015, No. 375, §§ 1, 2; 2017, No. 293, § 5.

**Amendments.** The 2017 amendment rewrote (b)(1).

## **24-7-708. Employment of retired members by covered employers.**

(a) Effective July 1, 2009, after terminating employment under § 24-7-502 or reaching the normal retirement age, a retiree may:

(1) Accept employment with an employer covered by the Arkansas Teacher Retirement System without a limitation of his or her retirement annuity; and

(2) Continue to receive his or her monthly retirement annuity.



(b) Employers covered by the system that hire an employee who meets the conditions under subsection (a) of this section shall report the hiring of the retiree to the system in a time and a manner that the system may reasonably require.

(c) A retiree who receives monthly benefits and is employed by a covered employer shall not accrue additional service credit.

(d)(1) For a retired member employed in a position covered by the system, the covered employer shall remit the contributions on all salary paid to the retiree in an amount equal to the employer contribution rate applicable to active members.

(2) Contributions shall be paid by the employer and are not the responsibility of the retiree.

(e)(1) The Board of Trustees of the Arkansas Teacher Retirement System shall adopt rules to carry out the provisions of this section.

(2) A covered employer that employs retirees is subject to the rules adopted by the board.

**History.** Acts 1973, No. 427, § 9; 1975, No. 549, § 13; 1977, No. 541, § 8; A.S.A. 1947, § 80-1443; Acts 1991, No. 43, § 7; 1991, No. 239, § 1; 1995, No. 1293, § 1; 1997, No. 384, § 1; 1999, No. 30, § 1; 2001, No. 1146, § 2; 2005, No. 911, § 1; 2007, No. 97, § 14; 2007, No. 612, § 1; 2007, No. 698, § 1; 2009, No. 743, § 6; 2021, No. 279, § 22.

**Amendments.** The 2021 amendment substituted “retiree” or “retirees” for “retirant” or “retirants” throughout the section; and substituted “normal retirement age” for “age of normal retirement” in the introductory language of (a).

## 24-7-709. Disposition of member contributions — Residue.

(a)(1)(A) If a retiree and his or her option annuitants, if any, die before receiving annuity payments equal to the member’s residue amount, then the residue amount shall be paid to such persons as the retiree shall have nominated by written designation duly executed and filed with the Arkansas Teacher Retirement System.

(B) As used in this subchapter, “residue” means the difference between the accumulated contributions and regular interest credited to the retirement reserve account as of the member’s retirement effective date and the total amount of retirement annuities paid.

(2) If a retiree and his or her option annuitants die and the member has failed to designate a beneficiary or if all designated beneficiaries have predeceased the retiree, the residue shall be paid to the retiree’s estate.

(b) If upon the termination of the option annuity no surviving beneficiary designated by the member survives and it is impracticable to make payment to the member’s estate, the residue shall be forfeited to the trust assets of the system subject to any valid claim of the member’s estate under § 24-7-734.

**History.** Acts 1973, No. 427, § 9; A.S.A. 1947, § 80-1443; Acts 2005, No. 494, § 1; 2007, No. 97, § 15; 2009, No. 468, § 19; 2021, No. 279, § 23.

**Amendments.** The 2021 amendment substituted “subchapter” for “section” in substituted “retiree” or “retiree’s” for “retirant” or “retirant’s” throughout (a); and (a)(1)(B).

### **24-7-710. Survivor annuity benefits.**

(a)(1) If an active member with five (5) or more years of actual and reciprocal service, including credited service for the year immediately preceding his or her death, dies before the receipt of retirement benefits from the Arkansas Teacher Retirement System, then the benefits provided in this section shall be paid to eligible survivors.

(2)(A) An immediately eligible survivor is entitled to receive monthly benefits beginning the month after the death of the member if the survivor application is filed with the system within three (3) months of the death of the member, otherwise the monthly benefits shall begin the month that the survivor application is filed with the system.

(B) If an immediately eligible survivor or the minor survivor’s guardian or legal representative fails to complete the application process within six (6) calendar months after the application required under subdivision (a)(2)(A) of this section is filed, including the submission of any additional documentation required by the system, the application shall be void unless an extension is granted by the system.

(b)(1)(A)(i) Unless the member otherwise directs an alternative beneficiary by using a beneficiary form approved by the system, a member’s surviving spouse, who was married to the member for at least the two (2) years immediately preceding the member’s death, shall receive an annuity computed in the same manner in all respects as if the member had retired on the date of the member’s death and elected Option A under § 24-7-706 to provide one hundred percent (100%) survivor annuity benefits, including benefits applicable under § 24-7-713, for his or her spouse.

(ii) The system shall continue to pay any benefits applicable under § 24-7-713 for an eligible surviving spouse, including a spouse who began receiving benefits on or after July 1, 2009.

(B)(i) If a surviving spouse is immediately eligible to receive a monthly benefit immediately after the death of a member, the immediately eligible surviving spouse is entitled to receive monthly benefits beginning the month after the death of the member if the survivor application is filed with the system within three (3) months of the death of the member, otherwise the monthly benefits shall begin the month that the survivor application is filed with the system if at the time of the member’s death the member had:

(a) Accumulated twenty-five (25) years or more of credited service and qualified as eligible to receive a retirement annuity under §§ 24-7-701 and 24-7-702; or

(b) Reached sixty (60) years of age and qualified as eligible to receive a retirement annuity under § 24-7-707.



(ii) If an immediately eligible spouse fails to complete the application process within six (6) calendar months after the application required under subdivision (b)(1)(B)(i) of this section is filed, including the submission of all additional documentation required by the system, the application shall be void unless an extension is granted by the system.

(C)(i) If the surviving spouse is not immediately eligible to receive monthly benefits under subdivision (b)(1)(B) of this section, the surviving spouse's benefits shall begin the later of either the month following the date the member would have been eligible to receive benefits had the member survived or the date that an application for a surviving spouse's benefits is filed with the system.

(ii) If a surviving spouse becomes eligible for surviving spouse benefits and fails to complete the application process within six (6) calendar months after the application required under subdivision (b)(1)(B)(i) of this section is filed, including the submission of any additional documentation required by the system, the application shall be void unless an extension is granted by the system.

(D) If the surviving spouse is eligible to receive the survivor annuity and the member had not reached sixty (60) years of age at the time of the member's death, the surviving spouse may elect to defer receipt of the annuity until the member would have reached sixty (60) years of age, and the surviving spouse's benefits shall not be reduced under the early retirement provisions of § 24-7-702.

(E) The surviving spouse's benefits under this section are payable for the surviving spouse's lifetime.

(F) If the member directs an alternative beneficiary by using a beneficiary form approved by the system, the member may designate one or more residual beneficiaries to receive a lump-sum payment of the member's residue amount under § 24-7-709 in lieu of the member's surviving spouse.

(2) If at the time of the member's death there are no dependent children and the surviving spouse who is eligible to receive the annuity under this subsection files with the system a written waiver of his or her right to the spousal annuity, a lump-sum distribution of the deceased member's accumulated contributions plus regular interest may be made to the surviving spouse.

(3) The Board of Trustees of the Arkansas Teacher Retirement System may adopt rules to carry out the provisions of this section.

(c)(1)(A)(i) A surviving dependent child of the member shall receive an annuity in an amount equal to one percent (1%) of the member's highest salary year for each quarter of a year credited as actual service in the system but not to exceed twenty (20) quarters of a year that are credited as actual service in the system for up to a maximum of twenty thousand dollars (\$20,000).

(ii) If the member's highest salary year occurs in the year that the member died, the system shall calculate the surviving dependent child's annuity on the basis of a full year of salary by the member.

(B) If a member has more than three (3) surviving dependent children, the aggregate amount of the surviving dependent children's annuity shall not exceed the lesser of sixty percent (60%) of the member's highest salary year or sixty thousand dollars (\$60,000) per year and shall be divided equally among the surviving dependent children.

(2)(A) A child shall be considered a dependent child and eligible for the dependent child annuity until he or she reaches eighteen (18) years of age.

(B)(i) The child of a deceased member is considered a dependent child and is eligible for the dependent child annuity at eighteen (18) years of age or older, but not older than twenty-three (23) years of age, if the dependent child stays continuously enrolled as a full-time student at an accredited secondary school, college, or university.

(ii) Regardless of age, a deceased member's child who has been deemed physically or mentally incapacitated by a court of competent jurisdiction is eligible to receive a dependent child annuity for as long as the incapacity exists.

(3) When a dependent child ceases to be a dependent or dies, his or her share of the annuity shall terminate.

(d) For the purposes of § 24-7-709 related to the disposition of a member's residue amount, a survivor annuity received from the member's deposit account under this section shall be considered annuity payments received by the member or his or her designated beneficiary and shall offset any disposition of residue payable under § 24-7-709 to the estate of the member or to an alternate payee.

(e) If the member had previously received benefits from the system and has not repaid in full all amounts payable by him or her to the system, the annuity amounts otherwise provided by this section shall be withheld until the total amount owed to the system is repaid.

(f)(1) For eligibility under this section, a member is considered active for an additional fiscal year following the last fiscal year that the member renders actual service to a covered employer and obtains at least one-fourth ( $\frac{1}{4}$ ) of a year of service credit.

(2) In addition, a member is considered active for eligibility under this section if in the fiscal year of a member's death, the member earned at least ten (10) days of service credit in each quarter before and including the quarter of the member's death.

(3) Service credit used in calculating any benefits paid under this section means days of service, including paid sick leave covered by the employer.

**History.** Acts 1973, No. 427, § 9; 1975, §§ 9-11; 1983, No. 665, §§ 9-11; 1985, No. 549, §§ 6-13; 1977, No. 541, §§ 5-8; 504, § 4; A.S.A. 1947, § 80-1443; Acts 1977, No. 640, §§ 1, 2; 1977, No. 727, § 1; 1987, No. 4, § 3; 1997, No. 1053, § 9; 1979, No. 681, §§ 5-12; 1979, No. 776, 2003, No. 853, § 2; 2005, No. 385, § 8; §§ 1, 2; 1981, No. 14, § 1; 1981, No. 365, 2005, No. 494, § 2; 2007, No. 97, § 16; §§ 6, 7; 1981, No. 435, § 2; 1983, No. 17, 2009, No. 1324, § 1; 2011, No. 45, § 11; § 2; 1983, No. 127, § 2; 1983, No. 619, 2011, No. 137, § 3; 2013, No. 571, §§ 1-3;



2017, No. 243, §§ 1-3; 2017, No. 505, §§ 1-4; 2019, No. 210, § 1; 2019, No. 427, § 13.

**Amendments.** The 2017 amendment by No. 243 substituted "Unless the member otherwise directs an alternative beneficiary by using a beneficiary form approved by the system, a" for "The" in (b)(1)(A)(i); and added (b)(1)(F) and (b)(3).

The 2017 amendment by No. 505 inserted "and reciprocal" in (a)(1); added (a)(2)(B), (b)(1)(B)(ii) and (b)(1)(C)(ii); rewrote (c)(1)(A)(i); and, in (c)(1)(B), inserted "the lesser of" and "or sixty thousand dollars (\$60,000) per year".

The 2019 amendment by No. 210 inserted "and eligible for the dependent child annuity" in (c)(2)(A); rewrote (c)(2)(B)(i); and in (c)(2)(B)(ii), substituted "Regardless of age, a deceased member's child" for "Any child", and deleted "regardless of age" from the end.

The 2019 amendment by No. 427, in (d), substituted "a member's residue amount, a survivor annuity received from the member's deposit account" for "residue, any amounts received from the member's deposit account in the form of a survivor annuity" and added "to the estate of the member or to an alternate payee".

### **24-7-711. Refund of member contributions upon termination.**

(a)(1) If a member discontinues covered employment and does not plan to be rehired by a covered employer, the member may elect to be paid a refund of his or her contributions and regular interest credited to the member's deposit account within six (6) months following the date the member's written application is filed with the Arkansas Teacher Retirement System.

(2) Any contributions remaining on deposit shall accrue regular interest at the end of each fiscal year as provided by law.

(b)(1) If an active member dies and a survivor annuity is not payable under § 24-7-710, the member's accumulated contributions and regular interest to the time of payment shall be paid to such persons as the member shall have nominated by a written designation that is executed by the member and filed with the system.

(2) If there are no designated persons surviving the member, the accumulated contributions are payable to the member's estate.

(3) If no annuity is payable to a dependent child on account of the member's death and if the sole beneficiary who can receive the annuity is the member's surviving spouse, then the member's surviving spouse may elect to receive a refund of accumulated contributions and regular interest paid under this subchapter.

(4) For members dying before July 1, 2011, with an unpaid residual balance, interest on the deceased member's accumulated contributions under this subsection shall cease to accrue after July 1, 2011.

(5) Regular interest on a deceased member's accumulated contributions under this subsection shall cease to accrue on the July 1 after the member's death.

(c) A member or surviving spouse who elects to receive a refund of member contributions under this section also cancels all the member's service credit, including noncontributory service credit, and all membership rights and beneficiary designations in the Arkansas Teacher Retirement System.

**History.** Acts 1973, No. 427, § 9; 1975, No. 549, §§ 6-13; 1977, No. 541, §§ 5-8; 1977, No. 640, §§ 1, 2; 1977, No. 727, § 1; 1979, No. 681, §§ 5-12; 1979, No. 776, §§ 1, 2; 1981, No. 14, § 1; 1981, No. 365, §§ 6, 7; 1981, No. 435, § 2; 1983, No. 17, § 2; 1983, No. 127, § 2; 1983, No. 619, §§ 9-11; 1983, No. 665, §§ 9-11; 1985, No. 805, § 8; A.S.A. 1947, § 80-1443; Acts 2005, No. 494, § 3; 2007, No. 97, § 17; 2009, No. 468, § 20; 2011, No. 136, § 1;

2011, No. 976, § 1; 2013, No. 140, § 5; 2017, No. 293, § 6; 2021, No. 279, §§ 24, 25.

**Amendments.** The 2017 amendment substituted "law" for "§ 24-7-410(d)" in (a)(2).

The 2021 amendment inserted "and does not plan to be rehired by a covered employer" in (a)(1) and substituted "Regular interest" for "Interest" in (b)(5).

### **24-7-713. Retirement annuity — Simple cost of living adjustment and monthly benefit stipend — Definition.**

(a)(1) July 1 of each year, retirants, survivors, participants in the Teacher Deferred Retirement Option Plan, and annuity beneficiaries who have been receiving monthly benefits for the previous twelve (12) months shall receive a simple cost of living adjustment.

(2) The cost of living adjustment under this section is calculated by multiplying one hundred percent (100%) of the member's base retirement annuity times three percent (3%).

(3) The redetermined amount shall not be less than the base amount.

(4) As used in this section, "base amount" means the amount of the benefit payable at retirement plus any one-time increases granted by legislative change after the member's effective date of retirement benefits, excluding the simple cost of living adjustment under this section and the benefit stipend under subsection (d) of this section.

(5) The redetermined amount under this subsection is not considered a benefit enhancement under the limitations under § 24-1-106.

(b)(1) A member with at least ten (10) years of actual service in the Arkansas Teacher Retirement System is eligible to receive a benefit stipend in addition to his or her monthly retirement benefit.

(2) The Board of Trustees of the Arkansas Teacher Retirement System may modify the amount of the benefit stipend from a maximum of seventy-five dollars (\$75.00) per month to not less than one dollar (\$1.00) per month for eligible benefit participants as a benefit supplement in addition to the cost of living adjustment under subsection (a) of this section.

(3) A benefit stipend increase or decrease adopted by the board shall apply to a complete fiscal year and shall remain in effect until adjusted by the board subject to the limitations under subdivision (b)(5) of this section.

(4) The board may adjust the benefit stipend amount by resolution at a meeting of the board.

(5) The board shall not reduce the benefit stipend unless the:

(A) Arkansas Teacher Retirement System's actuary certifies to the board that the amortization period exceeds eighteen (18) years; and

(B) Board determines that a reduction in the benefit stipend is prudent to maintain actuarial soundness.

(6) The board may phase in an increase or decrease of the benefit stipend.



(7) If a member was eligible for a benefit stipend, the benefit stipend shall be applied to the monthly benefit of the member's designated survivor and option beneficiary.

(c) Nothing contained in this section shall require the Arkansas Public Employees' Retirement System to pay any portion of the benefits provided for in this section.

(d)(1) The board may remove by board resolution the benefit stipend from the base amount of current retirants and option beneficiaries if the board determines that the removal of the benefit stipend from the base amount is prudent in order to maintain actuarial soundness.

(2) The board may phase in the removal of the benefit stipend from the base amount of current retirant and option beneficiaries by board resolution.

**History.** Acts 1973, No. 427, § 9; 1975, No. 549, § 8; 1979, No. 776, § 2; 1981, No. 14, § 1; 1983, No. 127, § 2; 1985, No. 162, § 1; A.S.A. 1947, § 70-1443; Acts 1987, No. 802, § 2; 1991, No. 44, § 3; 1999, No. 400, § 1; 1999, No. 1066, § 7; 1999, No. 1590, § 3; 2001, No. 360, § 1; 2001, No. 742, § 2; 2003, No. 347, § 1; 2003, No. 853, § 3; 2007, No. 297, § 1; 2009, No. 468, § 21; 2011, No. 45, §§ 12, 13; 2013, No. 603, § 1; 2017, No. 782, §§ 1-3; 2019, No. 427, § 14.

**Amendments.** The 2017 amendment added "and the benefit stipend under subsection (d) of this section" in (a)(4); rewrote (b)(4); and added (b)(5) and (d).

The 2019 amendment added (b)(1) and redesignated the remaining subdivisions in (b) accordingly; deleted "Effective July 1, 2013" from the beginning of (b)(2); updated an internal reference in (b)(3); and added (b)(7).

## **24-7-715. Benefit rights not subject to legal process — Definition.**

(a) As used in this section, "pension assignee" means an individual or entity that is not a designated beneficiary and:

(1) Is assigned some or all of a benefit participant's pension benefits by the benefit participant; or

(2) Claims an interest in, or control over, a benefit participant's plan benefit or an account to which a benefit participant's plan benefit is deposited.

(b)(1) Except as provided in subsection (e) of this section, a benefit participant's right to an annuity, to the return of accumulated contributions, to the annuity itself, to any annuity option, to a plan benefit, and to any other right accrued or accruing under the provisions of this act, and all moneys belonging to the Arkansas Teacher Retirement System, shall not be:

(A) Subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other legal or equitable process; or

(B) Assignable or transferable.

(2) An employer shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a benefit participant.

(3) This subsection does not prevent the right of the system to:

(A) Correct errors under § 24-7-205 in any manner provided by law; or

(B) Collect any moneys due from or related to a member account associated with a benefit participant.

(4) This subsection does not apply to the rollover of distributions as allowed under § 24-7-719.

(c) If an inactive member is found by any court of competent jurisdiction of this state to be willfully refusing or failing to support minor dependent children of the individual in violation of a court order providing for such support, although the individual is financially able to do so, then the court may order the accumulated contributions, annuity or annuity options, or any other funds accruing under this chapter to be paid into the registry of the court for such further disposition as the court deems just and proper.

(d)(1) If, under the provisions of subsection (c) of this section, a court orders all, or a portion of, a person's accumulated contributions to be paid into the registry of the court, the payment shall be made by the system to the court.

(2) The system shall notify the person of the payment and give the person an opportunity to redeposit the amount of the payment in the system.

(3) If the payment is not redeposited, then any system annuity otherwise payable to, or on behalf of, the person shall be reduced in the proportion that the payment bears to the person's accumulated contributions before the payment.

(e)(1) A pension assignee shall not use any device, transfer, or other related scheme to circumvent the prohibition against the assignment or transfer of a plan benefit.

(2) A device, transfer, or other related scheme under subdivision (e)(1) of this section includes without limitation:

(A) The deposit of a plan benefit into a joint account held by a benefit recipient and a pension assignee; and

(B) A pension assignee's authorization under a power of attorney or other instrument to access, or obtain funds from, an account to which plan benefits are deposited.

**History.** Acts 1973, No. 427, § 9; 1977, No. 727, § 1; 1983, No. 619, § 11; 1983, No. 665, § 11; A.S.A. 1947, § 80-1443; Acts 2017, No. 199, § 1; 2017, No. 293, § 7.

**Amendments.** The 2017 amendment by No. 199 added "Definitions" to the end of the section heading; added (a), (b)(3), (b)(4) and (e) and redesignated the remaining subsections accordingly; rewrote (b)(1); in (b)(2), substituted "An" for "However, the" and "benefit participant" for

"member, retirant, or beneficiary"; and rewrote (d).

The 2017 amendment by No. 293, in (c), substituted "If an inactive member" for "In the event an individual is no longer an active teacher or employee of any public school district in this state, nor on leave of absence, and", deleted "in its discretion" following "court may", substituted "this chapter" for "the provisions of this act", and substituted "deems" for "shall deem".



**24-7-716. [Repealed.]**

**Publisher's Notes.** This section, concerning a lump-sum payment of the reserve value of a small annuity, was repealed by Acts 2015, No. 225, § 1. The

section was derived from Acts 1973, No. 427, § 9; 1985, No. 805, § 10; A.S.A. 1947, § 80-1443.

**24-7-718. Minimum financial conditions for benefit increases.**

(a) For an increase in benefit formulas to be effective, the regular annual actuarial valuation for the calendar year immediately preceding the effective date of the increase shall be based upon an investment rate assumption as recommended by the system's actuary as financially sound for the Arkansas Teacher Retirement System and set by the Board of Trustees of the Arkansas Teacher Retirement System and shall indicate that up to and including a fourteen-percent-of-pay employer contribution rate is sufficient to amortize all unfunded actuarial accrued liabilities for members over a period of eighteen (18) years or less unless the required contribution rate would exceed fourteen percent (14%).

(b) For any increase to be effective on a scheduled date, all increases scheduled for that date must collectively meet the minimum financial conditions.

(c)(1) On any scheduled date that the increases do not collectively meet the minimum financial conditions, the Board of Trustees of the Arkansas Teacher Retirement System shall have the authority to delay the increase until the minimum financial conditions are met.

(2) Such delayed increase shall only be given on a July 1 and shall be the increase set out in § 24-7-713(b)(1).

**History.** Acts 1991, No. 44, § 4; 2009, No. 468, § 22; 2019, No. 427, § 15.

**Amendments.** The 2019 amendment, in (a), substituted "as recommended by the system's actuary as financially sound for the Arkansas Teacher Retirement Sys-

tem and set by the Board of Trustees of the Arkansas Teacher Retirement System" for "of no more than eight percent (8%)", and substituted "eighteen (18) years" for "thirty (30) years".

**24-7-719. Rollover of distributions — Definitions.**

(a) As used in this section:

(1) "Direct rollover" means a payment by the Arkansas Teacher Retirement System to the eligible retirement plan specified by the distributee;

(2)(A) "Distributee" includes a member or former member.

(B) The member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in the Internal Revenue Code, 26 U.S.C. § 414(p), as it existed on January 1, 2011, are distributees with regard to the interest of the spouse or former spouse;

(3)(A) "Eligible retirement plan" means an eligible plan under the Internal Revenue Code, 26 U.S.C. § 457(b), as it existed on January 1, 2011, that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into such a plan from the Arkansas Teacher Retirement System individual retirement account described in the Internal Revenue Code, 26 U.S.C. § 408(a), as it existed on January 1, 2011, and an individual retirement annuity described in the Internal Revenue Code, 26 U.S.C. § 408(b), as it existed on January 1, 2011, an annuity plan described in the Internal Revenue Code, 26 U.S.C. § 403(a), as it existed on January 1, 2011, an annuity contract described in the Internal Revenue Code, 26 U.S.C. § 403(b), as it existed on January 1, 2011, or a qualified plan described in the Internal Revenue Code, 26 U.S.C. § 401(a), as it existed on January 1, 2011, that accepts the distributee's eligible rollover distribution.

(B) The definition of "eligible retirement plan" shall also apply in the case of distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in the Internal Revenue Code, 26 U.S.C. § 414(p), as it existed on January 1, 2011; and

(4)(A) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) Any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for:

(a) The life or life expectancy of the distributee;

(b) The joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary; or

(c) A specified period of ten (10) years or more;

(ii) Any distribution to the extent such a distribution is required under the Internal Revenue Code, 26 U.S.C. § 401(a)(9), as it existed on January 1, 2011;

(iii) Any hardship distribution;

(iv) The portion of any other distribution or distributions that are not includible in gross income; and

(v) Any other distribution that is reasonably expected to total less than two hundred dollars (\$200) during a year.

(B) A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such a portion may be transferred only to an individual retirement account or annuity described in the Internal Revenue Code, 26 U.S.C. § 408(a) - (b), as it existed on January 1, 2011, or to a qualified defined contribution plan described in the Internal Revenue Code, 26 U.S.C. § 401(a), or 26 U.S.C. § 403(a), as it existed on January 1, 2011, that agrees to separately account for amounts so transferred, including separately accounting for the portion of the



distribution that is includible in gross income and the portion of the distribution that is not so includible.

(b)(1)(A) A distributee or other eligible beneficiary receiving a distribution from the system may direct to have any portion of an eligible rollover distribution that is five hundred dollars (\$500) or more paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(B) The distribution under subdivision (b)(1)(A) of this section may be made:

(i) Despite any provision of this chapter that would otherwise limit a distributee's election under this section; and

(ii) At the time and in the manner prescribed by the system.

(C) The election under subdivision (b)(1)(A) of this section shall not be allowed for an eligible rollover distribution less than five hundred dollars (\$500).

(2) The amount under subdivision (b)(1)(A) of this section shall be paid to the trustee of the eligible retirement plan.

(3) Effective July 1, 2010, an eligible rollover distribution to a beneficiary who is not the surviving spouse of a member may be directed as provided under 26 U.S.C. § 402(c)(11) to a trustee-to-trustee transfer to an individual retirement account described in 26 U.S.C. § 408(a) or to an individual retirement annuity described in 26 U.S.C. § 408(b).

(c) Subsection (b) of this section applies to distributions made under §§ 24-7-709 — 24-7-711, § 24-7-716 [repealed], § 24-7-720, and § 24-7-1308.

(d) This section does not require the system to authorize a direct rollover of a distribution if:

(1) The distribution is not eligible to be treated as a direct rollover under the Internal Revenue Code; or

(2) The depository institution receiving the distribution is not eligible to receive a direct rollover under the Internal Revenue Code.

**History.** Acts 1993, No. 972, § 1; 2007, No. 97, § 18; 2009, No. 468, § 23; 2011, No. 45, § 14; 2015, No. 87, § 1.

## **24-7-720. Lump-sum benefit — Definition.**

(a)(1)(A) If prior to July 1, 2007, an active member of the Arkansas Teacher Retirement System with five (5) or more years of actual service, including actual service for the year immediately preceding the member's death, dies in employer service before retirement, then a lump sum of up to ten thousand dollars (\$10,000) shall be paid to such persons as he or she shall have nominated by written designation duly executed and filed with the Board of Trustees of the Arkansas Teacher Retirement System.

(B) If on or after July 1, 2007, an active member of the Arkansas Teacher Retirement System with ten (10) or more years of actual

service dies in employer service before retirement, then a lump sum of up to ten thousand dollars (\$10,000) shall be paid to the persons he or she has nominated by written designation executed and filed with the board.

(2) If there are no designated persons who survive the member, the lump sum shall be paid to the member's estate.

(b)(1) If a retired member of the system dies prior to July 1, 2007, and the retired member accrued five (5) or more years of actual service, including actual service for the year immediately preceding the member's death, then a lump sum of up to ten thousand dollars (\$10,000) shall be paid to such persons as he or she shall have nominated by written designation duly executed and filed with the board.

(2) If a retired member of the system dies on or after July 1, 2007, and the retired member accrued ten (10) or more years of actual service, including actual service for the year immediately preceding the member's death, then a lump sum of up to ten thousand dollars (\$10,000) shall be paid to such persons as he or she shall have nominated by written designation duly executed and filed with the board.

(3) If there are no designated persons who survive the member, the lump sum shall be paid to the member's estate.

(c) The amount of the lump-sum payments under this section shall be set periodically and not more often than annually by rules and resolutions of the board as the board determines is actuarially appropriate for the system.

(d)(1) For determining eligibility for the lump-sum death benefit under this section, "actual service" means service rendered in a position covered by the system.

(2) "Actual service" does not include purchased or free credited service or reciprocal service.

(e)(1) A benefit enhancement provided for under this section shall not be implemented if it would cause the system's unfunded actuarial accrued liabilities to exceed an eighteen-year amortization.

(2) If the system's unfunded actuarial accrued liabilities exceed an eighteen-year amortization, a benefit enhancement provided for under this section shall not be implemented until the unfunded actuarial accrued liability is reduced to a level less than the standards prescribed by § 24-1-101 et seq.

(f)(1) Pursuant to the board's fiduciary duty, the board shall implement this benefit provision for lump-sum payments by either making the lump-sum payments directly from the system or by purchasing a group life insurance policy for the benefit of system members.

(2) A lump-sum payment under this subsection is intended to be exempt from income tax.

(g) Effective July 1, 2009, a retired member of the system who retired on or before July 1, 2007, and had five (5) or more years of actual service credited in his or her account at retirement shall have the lump-sum death benefit paid upon the retired member's death under subsection (b) of this section.



(h) A lump-sum payment under this section is intended to be exempt from income tax.

(i) For eligibility under this section, a member is considered active for an additional fiscal year following the last fiscal year that the member renders actual service in a position reported to the system by a covered employer and the member obtains at least one-fourth ( $\frac{1}{4}$ ) year of service credit.

(j)(1)(A) If a member accrues a minimum of ten (10) years of actual, contributory service, regardless of noncontributory service accrued in combination with the contributory service, the member shall receive the maximum lump-sum death benefit as determined by the board under this section.

(B) Upon the member's death, the lump-sum death benefit shall be paid to persons the member selects by written designation executed and filed with the board.

(2) The board may set a lump-sum benefit for noncontributory service as the board deems appropriate.

**History.** Acts 1997, No. 1022, § 1; 1999, No. 312, § 1; 2001, No. 359, §§ 1, 2; 2005, No. 494, § 4; 2007, No. 296, § 1; 2009, No. 425, § 1; 2009, No. 1323, § 1; 2011, No. 45, § 15; 2011, No. 137, § 4; 2011, No. 977, § 1; 2013, No. 140, §§ 6, 7; 2019, No. 427, § 16; 2021, No. 279, §§ 26, 27.

**Amendments.** The 2019 amendment rewrote (e).

The 2021 amendment substituted "rules and resolutions of the board as the board determines" for "rules of the board as it determines" in (c); and substituted "ten (10) years" for "fifteen (15) years" in (j)(1)(A).

#### **24-7-725. Limitation on benefit enhancement of § 24-7-702.**

(a) A benefit enhancement provided by § 24-7-702 shall not be implemented if it would cause unfunded actuarial accrued liabilities of the Arkansas Teacher Retirement System to exceed an eighteen-year amortization.

(b) If the system's unfunded actuarial accrued liabilities exceed an eighteen-year amortization, a benefit enhancement provided for by § 24-7-702 shall not be implemented until the unfunded actuarial accrued liability is reduced to a level less than the standards prescribed by § 24-1-101 et seq.

**History.** Acts 1997, No. 1074, § 2; 2019, No. 427, § 17.

**Amendments.** The 2019 amendment rewrote the section.

#### **24-7-727. Compounded cost of living adjustments.**

(a)(1) After July 1, 1999, the Board of Trustees of the Arkansas Teacher Retirement System may compound the cost of living adjustment for all retirants and participants in the Teacher Deferred Retirement Option Plan who have received a monthly retirement benefit for the prior twelve-month period.

(2) The amount of the benefit under this section shall be redetermined effective each July 1, and the redetermined amount shall be payable for the ensuing year.

(3) The simple cost of living adjustment is not payable in the year or years that the board implements the compounded cost of living adjustment.

(b)(1) The redetermined amount shall be the amount of the benefit payable as of the immediately preceding June 30 increased by three percent (3%).

(2) The redetermined amount shall become the base amount for determining all future cost of living adjustments.

(3)(A) The board may reverse a compounding of the cost of living adjustment for all retirants and participants in the Teacher Deferred Retirement Option Plan who benefit from the compounding.

(B) If a compounding of the cost of living adjustment is reversed the simple cost of living adjustment shall be used for the year that the compounded cost of living adjustment was reversed and future benefits shall be paid based on the simple cost of living adjustment.

(C) The future benefits of a member shall not be reduced to recover any additional benefits paid from the date the board uses a compounding cost of living adjustment to the date the board uses a simple cost of living adjustment.

(D) If a compounding cost of living adjustment is reversed, the reversal shall be effective at the beginning of the fiscal year.

(4) The compounding cost of living adjustment set by the board shall remain in effect until adjusted or reversed by the board.

(5) The board may change the compounding of the cost of living adjustment by resolution at a meeting of the board subject to the limitations under subdivision (b)(6) of this section.

(6) The board shall not reverse a compounding cost of living adjustment unless the:

(A) Arkansas Teacher Retirement System's actuary certifies to the board that the amortization period to pay the unfunded liabilities of the system exceeds eighteen (18) years; and

(B) Board determines by board resolution that reversal of the compounding cost of living adjustment that occurred in 2009 is prudent to maintain actuarial soundness.

(7) A board resolution reversing a compounding cost of living adjustment under subdivision (b)(6) of this section may include a chart or proxy formula to be applied when a member has a change in his or her benefits due to divorce, remarriage, or the death of the member or the member's spouse.

(8)(A) The board may phase in the reversal of a compounding cost of living adjustment under subdivision (b)(6) of this section by board resolution.

(B) Any reversal of a compounding cost of living adjustment under subdivision (b)(6) of this section shall be applied at the beginning of the fiscal year.



(c) The benefit provisions provided in subsections (a) and (b) of this section shall be implemented according to rules of the board as is actuarially appropriate for the Arkansas Teacher Retirement System.

(d) Before increasing a benefit under this section, the board shall file relevant information concerning the actuarial appropriateness of the action with the Joint Interim Committee on Public Retirement and Social Security Programs.

**History.** Acts 1999, No. 404, § 1; 2009, No. 468, § 25; 2011, No. 45, § 16; 2013, No. 967, § 1; 2017, No. 780, §§ 1, 2.      **Amendments.** The 2017 amendment rewrote (b)(6); and added (b)(7) and (8).

#### **24-7-728. Computation of benefits based on life annuity.**

The Board of Trustees of the Arkansas Teacher Retirement System is authorized by this section to raise the level of benefit to the current retirants and other beneficiaries of the Arkansas Teacher Retirement System to a comparable level increase to match the increase in benefits that would accrue to active members as a result of any increase in the calculation of a life annuity as provided in § 24-7-705(a)(1) in accordance with any rules the board might promulgate. The amount of any increase for retirants and other beneficiaries shall also be determined in accordance with the rules of the board as is actuarially appropriate for the system. Prior to increasing a benefit as provided in this section, the board shall file relevant information concerning the actuarial appropriateness of the action with the Joint Committee on Public Retirement and Social Security Programs, and the action shall be reviewed by the Joint Committee on Public Retirement and Social Security Programs.

**History.** Acts 1999, No. 396, § 2; 2019, No. 315, § 2891.      deleted "and regulations" following "rules" twice.

**Amendments.** The 2019 amendment

#### **24-7-730. Required distributions.**

(a)(1) Notwithstanding the provisions of this subchapter regarding the required dates of distribution of benefits under the Arkansas Teacher Retirement System to former members, the distribution of a former member's benefits under the system shall in any event be made or begun by April 1 of the calendar year following the later of the calendar year in which the member attains age seventy-two (72) or the calendar year in which the member retires.

(2) Distributions shall be made over the life of the member or over the lives of the member and the member's designated beneficiary or over a period not extending beyond the life expectancy of the member or the life expectancy of the member and the member's designated beneficiary.

(b)(1) If the member dies after the distribution of benefits under the system commences, the distribution of the benefits shall be continued in

accordance with the form of benefit in effect prior to the member's death.

(2)(A) If the member dies before the distribution of benefits under the system commences, the entire death benefit, if any, due as a result of the member's death shall be distributed no later than five (5) years after the member's death except to the extent that a written election is made to receive distributions in accordance with subdivision (b)(2)(B) or (C) of this section.

(B) If any portion of the member's benefit is payable to a designated beneficiary, distributions shall be made in substantially equal installments over the life or life expectancy of the designated beneficiary commencing no later than one (1) year after the member's death.

(C)(i) If the designated beneficiary is the member's surviving spouse, the date distributions required to begin in accordance with subdivision (b)(2)(A) of this section shall not be earlier than the date on which the member would have attained age seventy-two (72).

(ii) If the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the member.

(D) Notwithstanding the provisions of this subchapter, all distributions of benefits under the system shall comply with the requirements of the Internal Revenue Code, 26 U.S.C. 401(a)(9) and the regulations under the Internal Revenue Code, including United States Treasury Regulation, 26 C.F.R. § 1.401(a)(9)-2 and those provisions shall override any distribution options in this chapter that are inconsistent with section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9).

**History.** Acts 2001, No. 155, § 4; 2005, No. 71, § 3; 2021, No. 279, §§ 28, 29.

**Amendments.** The 2021 amendment substituted "age seventy-two (72)" for "age seventy and one-half (70½)" in (a)(1); re-

designated former (b)(2)(C) as (b)(2)(C)(i) and (ii); and substituted "age seventy-two (72)" for "age seventy and one-half (70½)" in (b)(2)(C)(i).

### 24-7-733. Limitation on benefits.

(a)(1) Notwithstanding the provisions of this subchapter, benefits paid under the Arkansas Teacher Retirement System shall not exceed the limitations of the Internal Revenue Code, 26 U.S.C. 415, that are applicable to governmental retirement plans, including without limitation the dollar limitations in of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A).

(2) The annual benefits, as may be increased in subsequent years, that are paid to retirants by the system shall not violate the limitations under the Internal Revenue Code, 26 U.S.C. 415(b), applicable to the annuity effective date under the Internal Revenue Code, 26 U.S.C. 415(d), and benefits shall be paid in a manner that protects the tax-qualified status of the system.

(b) For purposes of determining compliance with the Internal Revenue Code, 26 U.S.C. 415, "compensation" is defined as set forth in



United States Treasury Regulation, 26 C.F.R. § 1.415-2(d)(2), as it existed on January 1, 2009, and includes any amount that is not includible in the gross income of the member under the Internal Revenue Code, 26 U.S.C. 132(f)(4), as it existed on January 1, 2011.

**History.** Acts 2001, No. 155, § 4; 2005, No. 71, § 4; 2009, No. 1202, § 1; 2011, No. 45, § 18; 2015, No. 301, § 9.

#### **24-7-735. Contract buyout agreement — Settlements — Judgments — Calculation of benefits.**

(a) A member shall not accumulate service credit in the Arkansas Teacher Retirement System during the time that payments under a contract buyout agreement, settlement, claim, judgment, arbitration award, decree, or court-ordered payment are paid to the member by the employer unless the member continues to work on-site for the employer, or the service credit or additional salary is purchased as provided under subsection (c) of this section.

(b)(1) The employer shall provide a copy of a settlement agreement or court order under this section to the system so that the system can:

(A) Prevent the accumulation of service credit for any payments that are not for on-site work for the employer; and

(B) Calculate the cost to purchase service credit, additional salary, or both service credit and additional salary as provided under this section.

(2) A member shall not receive service credit or additional salary from the system under a settlement agreement or court order unless permitted under this section.

(c)(1) The system shall allow a member or employer to purchase service credit, additional salary, or both for the member for service credit the member would have earned but for termination, or salary that would have been paid but for employment discrimination to resolve a claim of wrongful termination or employment discrimination that results in a settlement agreement or court order.

(2) The member's official salary record shall be adjusted to include the purchased additional salary which may be used to compute the final average salary at the time of retirement if the purchased salary qualifies for the final average salary calculation.

(3) Service credit earned by a member from an employer from the date of termination by an employer to the date of the settlement agreement or court order shall be subtracted from the amount of service credit allowed for purchase under subdivision (c)(1) of this section.

(d)(1) The cost to purchase service credit, additional salary, or both shall be established using the actuarial equivalent as calculated by the system using the member's service history at the time of the purchase.

(2) The system shall use the same factors to determine the cost of the additional salary purchase as used to calculate an additional monthly benefit in the annuitization of a Teacher Deferred Retirement Option Plan distribution.

(3) The calculation shall be made with the assumption that the member would have immediately retired at the time of the additional salary purchase.

**History.** Acts 2011, No. 163, § 2; 2013, No. 521, § 2; 2017, No. 436, § 3; 2021, No. 279, § 30.

**Amendments.** The 2017 amendment deleted former (b) and redesignated the remaining subsections accordingly; rewrote present (b)(1) and inserted “additional” in (b)(2); in the introductory language of (c), inserted “or employer”, “or additional salary for the member for salary that should have been paid”, and “or the underpayment of salary that should have been paid”; rewrote (c)(1)(A)(i);

added (c)(1)(A)(ii); substituted “(c)(1)(A)” for “(d)” in (c)(1)(B); and added (d).

The 2021 amendment added “or the service credit or additional salary is purchased as provided under subsection (c) of this section” in (a); in (b)(1), inserted (b)(1)(B) and made stylistic changes; rewrote (c); in (d), inserted (d)(1) and redesignated former (d)(1) and (2) as (d)(2) and (3); in (d)(2), deleted “as used” after “factors” and inserted “as used” after “additional salary purchase”.

### **24-7-736. Calculation of final average salary — Definition.**

(a) Compensation in excess of the limitations set forth in the Internal Revenue Code of 1986, 26 U.S.C. 401(a)(17), as it existed on January 1, 2011, shall not be used for purposes of calculating final average salary on which benefits under the Arkansas Teacher Retirement System shall be based.

(b)(1) The limitation on compensation for an eligible employee shall not be less than the amount that was allowed to be taken into account under the system as in effect on July 1, 1993.

(2) As used in subdivision (b)(1) of this section, “eligible employee” means an individual who was a member of the system before the first plan year beginning after December 31, 1995.

(c)(1)(A) The Board of Trustees of the Arkansas Teacher Retirement System shall set the applicable number of years to be used in computing final average salary for retirement benefits at not less than three (3) years and not more than five (5) years.

(B) Before reducing the applicable number of years to be used in computing the final average salary, the board shall file relevant information concerning the actuarial appropriateness of the action with the Joint Interim Committee on Public Retirement and Social Security Programs for review by the Joint Interim Committee on Public Retirement and Social Security Programs.

(2)(A) Full and partial service years that are recorded as service credit shall be used in the calculation of the final average salary.

(B) If the member does not have full service years for the total years of service used in the calculation of final average salary, then the board may establish by rule a fair base salary for a member’s final average salary for purposes of comparison under subdivision (c)(4) of this section.

(3) If a member has less than the minimum number of years of credited service required for the final average salary formula, the final average salary of the member shall be the total salary paid to the



member for his or her years of credited service divided by the member's total credited years of service.

(4)(A) If a member has at least the minimum number of years of credited service required for the final average salary formula, the applicable number of highest service year salaries shall be ranked from lowest to highest.

(B) The lowest service year salary in the ranking shall be the base salary.

(C) The next-highest-ranked service year salary shall be compared to the base salary.

(D) The next-highest service year salary in the calculation of final average salary that is less than eight (8) years from the base salary year shall not exceed the base salary value plus the salary differential unless the next-highest year's value is less than or equal to the percentage increase of the base salary.

(E) After comparison of the base salary to the next-highest service year salary to meet the requirements of subdivision (c)(4)(D) of this section, any required reduction to the next-highest service year salary shall be made.

(F) The next-highest service year salary, with any required reduction, becomes the new base salary to compare to the next succeeding highest service year salary in the ranking until all service year salaries in the ranking have been compared.

(G) The total value of the base salaries shall then be divided by the applicable number of years to be used in computing final average salary.

(d) The system may settle any dispute concerning an employee's salary for purposes of the system.

(e) The board may adjust the final average salary calculated in accordance with subsection (c) of this section by board resolution provided that:

(1) The percentage increase under subdivision (c)(4)(D) of this section is set no lower than one hundred five percent (105%) per year and no higher than one hundred twenty percent (120%) per year; and

(2) The salary differential permitted under subdivision (c)(4)(D) of this section is set no lower than one thousand two hundred fifty dollars (\$1,250) per year and no higher than five thousand dollars (\$5,000) per year.

**History.** Acts 2011, No. 225, § 2; 2017, No. 611, §§ 1, 2; 2019, No. 427, §§ 18, 19; 2021, No. 279, § 31.

**Amendments.** The 2017 amendment, in (c)(3)(D), substituted "the percentage increase" for "one hundred twenty percent (120%)" and "within the amount of the salary differential" for "five thousand dollars (\$5,000) or less"; and added (f).

The 2019 amendment, in (c)(1), inserted "annually" and added "at not less than

three (3) years and not more than five (5) years"; rewrote (c)(2)(A); added (c)(2)(C) and (D); and rewrote (f).

The 2021 amendment added (c)(1)(B) and redesignated former (c)(1) as (c)(1)(A); deleted "annually" following "shall set" in (c)(1)(A); inserted "and partial" in (c)(2)(A); in (c)(2)(B), substituted "fair base salary" for "fair base year"; redesignated former (c)(2)(C) as (c)(3); deleted (c)(2)(D); redesignated and rewrote former

(c)(3) as (c)(4); deleted (d) and redesignated former (e) as (d); deleted former (f)(2) and redesignated former (f)(1) as (e); substituted "set no lower" for "adjusted no lower" in (e)(1); and updated internal references and made stylistic changes.

**24-7-738. Return to regular covered employment for service credit after disability retirement — Alternate option to return to disability retirement — Incentive to work.**

(a) If a member who has been on disability retirement with the Arkansas Teacher Retirement System returns to regular, covered employment and then returns to disability retirement with the system, the disability retirement benefit shall be the higher of the:

(1) Amount that the member would have received if he or she did not return to regular, covered employment; or

(2) Recomputed benefit using the additional salary and additional service credit earned by the member under the covered employment.

(b)(1) A member who returns to covered employment under this section after disability retirement shall not receive a disability retirement benefit from the system in any month that the member is paid a salary from a covered employer for a work period that is concurrent with the receipt of the disability retirement.

(2) Any disability retirement benefit erroneously paid to the member or retirant for a month in which the member receives salary from a covered employer may be recovered by the system as an overpayment as allowed by law.

**History.** Acts 2017, No. 549, § 8.

**SUBCHAPTER 8 — ALTERNATE PLAN FOR STATE COLLEGES**

**SECTION.**

24-7-801. Definitions.

24-7-804. Establishment and administration of plan.

24-7-805. Methods of providing benefits — Agent for service of process.

**SECTION.**

24-7-806. Procedure for designation of companies to provide benefit contracts.

24-7-807. Participation in plan.

24-7-808. Contributions.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."



**24-7-801. Definitions.**

As used in this subchapter:

- (1) "Alternate retirement plan" means a retirement plan based on the purchase of contracts providing retirement and death benefits for the employees of Arkansas State University, the Division of Higher Education employees, and employees of Arkansas's state-supported universities, colleges, or junior colleges that are not a part of the University of Arkansas system;
- (2) "Board" means the governing body of a college;
- (3) "College" means any one (1) of the state-supported universities, colleges, and junior colleges not a part of the University of Arkansas system, and Arkansas State University;
- (4) "Division employees" means the Director of the Division of Higher Education and the professional education employees of the division;
- (5) "Retirement system" means the Arkansas Teacher Retirement System;
- (6) "Staff members" means any employee of a college or university who is eligible for membership in any retirement plan;
- (7) "State" means the State of Arkansas; and
- (8) "State board" means the Arkansas Higher Education Coordinating Board.

**History.** Acts 1967, No. 436, § 1; A.S.A. 1947, § 80-1457; Acts 1991, No. 511, § 1; 2001, No. 765, § 1; 2019, No. 910, §§ 2371, 2372.

substituted "Division of Higher Education" for "department" in (1); and substituted "Division" for "Department" throughout (4).

**Amendments.** The 2019 amendment

**24-7-804. Establishment and administration of plan.**

- (a) The board of any college and the Arkansas Higher Education Coordinating Board may establish and maintain an alternate retirement plan which shall authorize the purchase of contracts providing retirement and death benefits for staff members and employees of the Division of Higher Education.
- (b) Under the plan, staff members and division employees shall contribute, to the extent authorized or required, toward the purchase of the contracts, which shall be issued to and become the property of the participants.
- (c) The board of any college which elects to establish and maintain an alternate retirement plan and the Director of the Division of Higher Education, if it elects to establish and maintain a plan, shall have authority to administer the plan and to perform or authorize the performance of all such functions as may be reasonably appropriate in its administration.

**History.** Acts 1967, No. 436, §§ 2, 7; A.S.A. 1947, §§ 80-1458, 80-1463; Acts 1991, No. 511, § 2; 2019, No. 910, § 2373.

**Amendments.** The 2019 amendment substituted "Division of Higher Education" for "Department of Higher Education" throughout.

tion” at the end of (a) and in (c); and substituted “division” for “department” in (b).

#### **24-7-805. Methods of providing benefits — Agent for service of process.**

(a) An alternate retirement plan may be a separate system or fund or may be one which participates in a larger system or fund with respect to some or all of the benefits provided thereunder.

(b) The benefits to be provided for or on behalf of staff members and employees of the Division of Higher Education under an alternate retirement plan may be provided through insurance policies and annuity contracts, both fixed and variable in nature, or a combination thereof, as specified in the plan, which insurance policies and annuity contracts may be obtained from any insurance company authorized to do business in this state or from any nonprofit company organized and operated exclusively for the purpose of aiding and strengthening educational or scientific institutions by issuing insurance or annuity contracts only to or for the benefit of such institutions or individuals engaged in their services.

(c) In any action brought by a staff member or division employee on a policy or contract, any official of the college or the Director of the Division of Higher Education shall be deemed to be the agent of the nonprofit company only for the purpose of service of process on the contract or policy, and for no other purpose.

**History.** Acts 1967, No. 436, § 3; A.S.A. substituted “Division of Higher Education” for “Department of Higher Education” in (b) and (c); and substituted “division” for “department” in (c).  
1947, § 80-1459; Acts 1991, No. 511, § 3;  
2019, No. 910, § 2374.

**Amendments.** The 2019 amendment

#### **24-7-806. Procedure for designation of companies to provide benefit contracts.**

(a) The board of each college or university, or the Arkansas Higher Education Coordinating Board, shall designate the companies from which contracts are to be purchased under the alternate retirement plan and shall approve the form and contents of the contracts.

(b) In making the designation and giving the approval, the board or state board shall give due consideration to:

(1) The nature and extent of the rights and benefits to be provided by the contracts for staff members and their beneficiaries;

(2) The relation of the rights and benefits to the amount of contributions to be made pursuant to the provisions of this subchapter;

(3) The suitability of the rights and benefits to the needs of the staff members and the interests of the college in the recruitment and retention of staff members; and

(4) The ability of the designated company or companies to provide the suitable rights and benefits under the contracts.



**History.** Acts 1967, No. 436, § 6; A.S.A. 1947, § 80-1462; Acts 1991, No. 511, § 4; 1993, No. 443, § 1; 2019, No. 910, § 2375.

**Amendments.** The 2019 amendment

substituted "Division of Higher Education" for "Department of Higher Education" following "Coordinating Board of the" in (a).

### **24-7-807. Participation in plan.**

Participation in an alternate retirement plan established pursuant to this subchapter shall be as follows:

(1) Any staff member employed or appointed by a college or university on or after the establishment of its alternate retirement plan shall participate in the plan or in the Arkansas Teacher Retirement System;

(2) Any staff member employed or appointed by a college or university prior to July 1, 1969, who is a member of the retirement system shall continue in that membership or shall participate in the alternate retirement plan, as provided in this subchapter;

(3)(A) Any staff member employed or appointed by a college or university with less than ten (10) years of member service in the retirement system may elect to terminate his or her membership in the retirement system and participate in the alternate retirement plan established by the employing college or university.

(B) The election shall be in writing and filed with the retirement system and the disbursing officer of the employing college or university within one (1) year after he or she becomes eligible to participate in the alternate retirement plan, except that, on or after July 1, 1993, until December 31, 1993, any staff member employed or appointed by a college or university who has less than ten (10) years of member service in the retirement system and who has not already so elected may elect to terminate his or her membership in the retirement system and participate in the alternate retirement plan established by the employing college or university. The election shall be in writing and filed with the retirement system and the disbursing officer of the employing college or university.

(C) All accumulated contributions to the credit of the staff member in the members' deposit account which is maintained pursuant to the provisions of § 24-7-406 shall be returned to the staff member, and all of his or her credited service under the retirement system shall be cancelled;

(4)(A)(i) Any staff member employed or appointed by a college or university with five (5) or more years of actual service who elects to participate only in the alternate retirement plan and who has left his or her contributions in the retirement system shall be eligible to receive an annuity on or after attaining sixty (60) years of age and on his or her retirement from covered employment.

(ii) The amount of the annuity shall be determined by the benefit formula of the retirement system at the time of his or her retirement.

(B) The election authorized under subdivision (4)(A) of this section shall be made in writing and filed with the retirement system and with the disbursing officer of the employing college or university on or

before July 1 of the year in which the person makes the election to participate in the alternate retirement plan.

(C) The person's annuity shall begin on the first day of the month following the date his or her application for retirement is filed with the board of trustees on or after his or her attainment of age sixty (60);

(5)(A)(i) Any Division of Higher Education employee who transferred from another state department or division covered by a state-supported retirement system may elect to participate in an alternate retirement plan.

(ii) The employee shall file written notice of his or her election with the Director of the Division of Higher Education.

(B)(i) Any division employee with five (5) or more years of actual service who elects to participate only in the alternate retirement plan and who has left his or her contributions in the retirement system shall be eligible to receive an annuity on or after attaining the normal retirement age and on his or her retirement from covered employment.

(ii) The amount of the annuity shall be determined by the benefit formula of the retirement system at the time of his or her retirement.

(C)(i) The election authorized under this subdivision (5) shall be made in writing and filed with the retirement system and with the director on or before July 1 of the year in which the person makes the election to participate in the alternate retirement plan.

(ii) The person's annuity shall begin on the first day of the month following the date his or her application for retirement is filed with the board of trustees on or after his or her attainment of normal retirement age and on his or her retirement from covered employment.

(D)(i) Effective July 1, 2001, staff members who elect to participate in an alternate retirement plan may elect to become members of the retirement system.

(ii) Service credit forfeited while a member of an alternate retirement plan cannot be established in the retirement system.

(iii) The election to withdraw from the alternate retirement plan and become a member of the retirement system shall be made by December 31, 2001, and notice of the election shall be made in writing and filed with the retirement system and the disbursing officer of the employing college or university by December 31, 2001.

(6)(A) Each college or university shall provide to each new employee of the college or university a written document explaining to the employee each of his or her retirement plan options.

(B) The written document shall contain a line for the employee's signature verifying that he or she understands his or her retirement plan options.

(C) The signed document shall be added to the employee's personnel file.



**History.** Acts 1967, No. 436, § 4; 1969, No. 232, § 1; 1969, No. 622, § 1; 1975, No. 235, § 1; 1979, No. 227, § 1; A.S.A. 1947, § 80-1460; Acts 1991, No. 511, § 5; 1993, No. 299, § 1; 1995, No. 332, § 1; 1997, No. 944, § 1; 1997, No. 1053, § 10; 1999, No. 908, § 1; 2001, No. 1784, § 1; 2007, No. 831, § 1; 2019, No. 910, § 2376.

**Amendments.** The 2019 amendment substituted "Division of Higher Education" for "Department of Higher Education" in (5)(A)(i) and (5)(A)(ii); inserted "or division" in (5)(A)(i); and substituted "division" for "department" in (5)(B)(i).

## **24-7-808. Contributions.**

(a)(1) Any college or university which elects to establish and maintain an alternate retirement plan, and the Arkansas Higher Education Coordinating Board if it so elects, shall contribute to that plan on behalf of each staff member who elects to participate in the alternate retirement plan, or employee of the Division of Higher Education, six percent (6%) of his or her total regular compensation during the continuance of his or her employment.

(2) Each staff member who elects to participate in the alternate retirement plan, or division employee, at the discretion of the college or university, shall also contribute thereto six percent (6%) of his or her total regular compensation.

(b)(1) At its discretion, the division, college, or university may contribute a minimum of an additional four percent (4%) of the staff member's total regular compensation.

(2) The division, college, or university may contribute an amount so that the percentage rate in subdivision (a)(1) of this section plus the additional rate in subdivision (b)(1) of this section equals the total employer contribution rate under the Arkansas Teacher Retirement System if the college or university determines that sufficient funds are available to pay that contribution rate.

(3) Each staff member may be required to match that additional contribution by contributing a percentage of his or her total regular compensation as determined by the division, college, or university.

(c) In addition to the contributions defined in subsections (a) and (b) of this section, the division or any college or university which elects to establish and maintain an alternate retirement plan may permit a newly eligible employee who elects to establish and maintain an alternate retirement plan and may permit a newly eligible employee who elects to participate in an alternate retirement plan to make incremental increases in plan contributions to reach the required contribution level by completion of the fourth year of participation in the alternate retirement plan.

(d) Payment of contributions authorized by this section shall be made by the disbursing officer of the college or university and by the state official charged with the duty of paying salaries to division employees to the designated companies in accordance with the provisions of this section.

**History.** Acts 1967, No. 436, § 5; 1969, No. 232, § 2; 1969, No. 622, § 2; 1979, No. 726, § 1; A.S.A. 1947, § 80-1461; Acts 1991, No. 511, § 6; 2001, No. 765, § 2; 2005, No. 1287, § 1; 2019, No. 910, § 2377.

**Amendments.** The 2019 amendment substituted "Division of Higher Education" for "Department of Higher Education" in (a)(1); and substituted "division" for "department" throughout the section.

## SUBCHAPTER 9 — ALTERNATE PLAN FOR VOCATIONAL-TECHNICAL SCHOOLS

### SECTION.

24-7-901. Definitions.

24-7-904. Establishment and administration of plan.

24-7-905. Methods of providing benefits — Agent for service of process.

24-7-906. Approval of companies and contracts.

### SECTION.

24-7-907. Participation in plan.

24-7-908. Contributions.

24-7-909. Extension of group insurance coverage by dependents of deceased eligible employee.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 427, § 7: Mar. 23, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of § 24-7-201 et seq. are in need of

immediate revision and updating to conform with sound public pension policy and actuarial requirements; that there are conflicts in the law applicable to the Arkansas Teacher Retirement System concerning reciprocal service in alternate retirement plans; that member benefits will be at risk if the conflicts in the law concerning reciprocal service in alternate retirement plans remain unresolved; that this act resolves the conflicts in the law concerning reciprocal service in alternate retirement plans; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of this state; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System and reciprocal systems. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."



### 24-7-901. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Alternate retirement plan" means a retirement plan, based on the purchase of contracts approved by the Career Education and Workforce Development Board before the effective date of Acts 2019, No. 910, which provides retirement and death benefits for the:

(A) Instructors and administrative staff of the technical institutes or postsecondary vocational-technical schools of the State of Arkansas; and

(B) Staff of the Department of Career Education as it existed before the effective date of Acts 2019, No. 910;

(2) "Retirement system" means the Arkansas Teacher Retirement System;

(3) "School" means any technical institute or postsecondary vocational-technical school established pursuant to § 6-51-202 for the vocational training of students; and

(4) "Staff members" means both instructors and administrative staff of a technical institute or postsecondary vocational-technical school and the staff of the department who are eligible for membership in the retirement system.

**History.** Acts 1983, No. 480, § 1; A.S.A. 1947, § 80-1466; Acts 1999, No. 1323, § 49; 2019, No. 84, § 1; 2021, No. 545, § 25.

**A.C.R.C. Notes.** The Department of Career Education was previously known as the Department of Workforce Education. References in this subchapter apply to those members of an alternate retirement plan as previously established under this subchapter. Accordingly, these references were not included in 2019 Acts No. 910 that amended some of these entity

names.

**Amendments.** The 2019 amendment repealed the defined terms of "Board", "Department", "Director", and "State", and redesignated the remaining subdivisions accordingly; in present (1), substituted "Department of Career Education" for "Department of Workforce Education" and "Career Education and Workforce Development Board" for "board"; and substituted "department" for "Department of Workforce Education" in (4).

The 2021 amendment rewrote (1).

### 24-7-904. Establishment and administration of plan.

(a) The Career Education and Workforce Development Board may establish and maintain an alternate retirement plan which shall authorize the purchase of contracts providing retirement and death benefits for staff members.

(b) Under the plan, staff members shall contribute, to the extent authorized or required, toward the purchase of the contract, which shall be issued to and become the property of the participants.

(c) The alternate retirement plan shall be administered by the board pursuant to a written alternate retirement plan document, which shall be formally adopted by the board prior to the establishment of the alternate retirement plan.

(d) The board shall have the authority to administer all alternate retirement plans established pursuant to this subchapter and to

perform or authorize the performance of all such functions as may be reasonably appropriate in their administration.

**History.** Acts 1983, No. 480, §§ 2, 7; A.S.A. 1947, §§ 80-1467, 80-1472; Acts 2019, No. 84, § 2.

**Amendments.** The 2019 amendment substituted “Career Education and Workforce Development Board” for “State Board of Workforce Education and Career Opportunities” in (a).

#### **24-7-905. Methods of providing benefits — Agent for service of process.**

(a) An alternate retirement plan may be a separate system or fund or may be one which participates in a larger system or fund with respect to some or all of the benefits provided thereunder.

(b) The benefits to be provided for or on behalf of staff members under an alternate retirement plan may be provided through insurance policies or annuity contracts, both fixed and variable in nature, or a combination thereof, as specified in the plan. Those insurance policies and annuity contracts may be obtained from any insurance company authorized to do business in this state or from any nonprofit companies organized and operated exclusively for the purpose of aiding and strengthening educational or scientific institutions by issuing insurance or annuity contracts only to or for the benefit of such institutions or individuals engaged in their services.

(c) In any action brought by a staff member on a policy or contract, any school, school official, or any member of the Career Education and Workforce Development Board shall be deemed to be the agent of the nonprofit company or insurance company only for the purpose of service of process on the contract or policy, and for no other purpose.

**History.** Acts 1983, No. 480, § 3; A.S.A. 1947, § 80-1468; Acts 2019, No. 84, § 3.

**Amendments.** The 2019 amendment substituted “Career Education and Workforce Development Board” for “State Board of Workforce Education and Career Opportunities” in (c).

#### **24-7-906. Approval of companies and contracts.**

(a) The Career Education and Workforce Development Board shall approve the companies from which contracts are to be purchased under the alternate retirement plan and shall approve the form and contents of the contracts.

(b) In giving the approval, the board shall give due consideration to:

(1) The nature and extent of the rights and benefits to be provided by the contracts for staff members and their beneficiaries;

(2) The relation of those rights and benefits to the amount of contributions to be made pursuant to the provisions of this subchapter;

(3) The suitability of the rights and benefits to the needs of the staff members and the interests of the vocational education school and the Department of Career Education in the recruitment and retention of staff members; and



(4) The ability of the approved companies to provide the suitable rights and benefits under the contracts.

**History.** Acts 1983, No. 480, § 6; A.S.A. 1947, § 80-1471; Acts 2019, No. 84, § 4.

**A.C.R.C. Notes.** As to the renaming of the Department of Career Education, see A.C.R.C. Notes, § 24-7-901.

**Amendments.** The 2019 amendment substituted "Career Education and Workforce Development Board" for "State Board of Workforce Education and Career Opportunities" in (a).

## **24-7-907. Participation in plan.**

Participation in an alternate retirement plan established pursuant to this subchapter shall be as follows:

(1) All staff members shall participate in either the Arkansas Teacher Retirement System or an alternate retirement plan or may participate in both, but participation in both shall be limited to the circumstances described in subdivision (2) of this section;

(2) Any staff member who has become fully vested in the retirement system may:

(A) Continue as an active member of the retirement system;

(B) Discontinue contributing to the retirement system, thus becoming an inactive member of the retirement system, and participate instead in an alternate retirement plan. Under those circumstances, the staff member would be both an inactive member of the retirement system and an active member of the alternate retirement plan; or

(C) Participate in an alternate retirement plan and receive all accumulated contributions to the credit of the staff member in the members' deposit account which is maintained pursuant to the provisions of § 24-7-406 and have the member's credited service under the retirement system cancelled;

(3) Any staff member who has participated in the retirement system for a period which is insufficient to allow for full vesting of that staff member's retirement system benefits may:

(A) Continue as an active member of the retirement system;

(B) Discontinue membership in the retirement system and transfer from the retirement system into his or her account with the alternate retirement plan, i.e., roll over all contributions which the staff member has previously made to the retirement system; or

(C) Participate in the alternate retirement plan and receive all accumulated contributions to the credit of the staff member in the members' deposit account which is maintained pursuant to the provisions of § 24-7-406 and have the member's credited service under the retirement system cancelled;

(4)(A) No staff member may participate in an alternate retirement plan without giving prior written notice of his or her election to participate in the alternate retirement plan.

(B) The notice of election shall be in writing on a form established by the Department of Career Education and filed with both the Director of the Division of Higher Education and the retirement system.

(C) New staff members shall make the election within ninety (90) days after the date of their employment;

(5)(A) Effective July 1, 2001, a staff member who elected to participate in an alternate retirement plan may elect to become a member of the retirement system.

(B) Service credit forfeited while a member of an alternate retirement plan cannot be established in the retirement system.

(C) The election to withdraw from the alternate retirement plan and become a member of the retirement system shall be made by December 31, 2001, and notice of the election shall be made in writing to the director and the retirement system by December 31, 2001.

**History.** Acts 1983, No. 480, § 4; 1985, No. 250, § 1; A.S.A. 1947, § 80-1469; Acts 1993, No. 979, § 1; 1995, No. 332, § 2; 1997, No. 944, § 2; 1999, No. 908, § 2; 2001, No. 1784, § 2; 2013, No. 140, § 9; 2019, No. 910, § 2378.

**A.C.R.C. Notes.** As to the renaming of

the Department of Career Education, see A.C.R.C. Notes, § 24-7-901.

**Amendments.** The 2019 amendment substituted "Division of Higher Education" for "Department of Career Education" in (4)(B).

## 24-7-908. Contributions.

(a)(1) The Department of Career Education shall contribute to the alternate retirement plan on behalf of each participating staff member an amount equal to the contribution made by the State of Arkansas for persons participating in the retirement system.

(2) Each staff member shall also contribute to the alternate retirement plan an amount equal to the maximum allowable member contribution under the retirement system or, at the option of the staff member, additional amounts allowable under the alternate retirement plan.

(b) Payment of contributions by the department which are authorized by the provisions of this section shall be made by the disbursing officer of the department.

(c)(1) All staff members who elect to participate in the alternate retirement plan shall so notify the State Board of Workforce Education and Career Opportunities in writing.

(2) The board shall establish a procedure for notifying the state official charged with paying the salaries of staff members, which official shall cause staff members' contributions to be withheld and forwarded to the company approved by the board and designated by the staff member.

**History.** Acts 1983, No. 480, § 5; A.S.A. 1947, § 80-1470; Acts 2019, No. 84, § 5.

**A.C.R.C. Notes.** As to the renaming of the Department of Career Education, see A.C.R.C. Notes, § 24-7-901.

**Amendments.** The 2019 amendment substituted "Department of Career Education" for "Department of Workforce Education" in (a)(1).



**24-7-909. Extension of group insurance coverage by dependents of deceased eligible employee.**

Upon the death of an insured eligible employee of an institution of higher education or of an insured eligible employee who is a member of the alternate retirement plan for employees of the Career Education and Workforce Development Board or of a person retired and receiving benefits under the alternate retirement plan, the dependents of the deceased person shall have the same option to extend the group insurance coverage of the dependents under the state group insurance plan as is afforded dependents of other deceased insured employees and retirees.

**History.** Acts 1985 (1st Ex. Sess.), No. 12, § 2; 1985 (1st Ex. Sess.), No. 35, § 2; A.S.A. 1947, § 12-3113.1; Acts 2019, No. 84, § 6; 2021, No. 427, § 3.

**Amendments.** The 2019 amendment substituted "Career Education and Work-

force Development Board" for "State Board of Workforce Education and Career Opportunities".

The 2021 amendment inserted the second occurrence of "retirement" and substituted "retirees" for "retirants".

**SUBCHAPTER 13 — TEACHER DEFERRED RETIREMENT OPTION PLAN**

SECTION.

- 24-7-1306. Amount of deposits.
- 24-7-1307. Account — Credit.
- 24-7-1308. Termination of participation in Teacher Deferred Retirement Option Plan — Distribution options.

SECTION.

- 24-7-1310. Death of participant.
- 24-7-1312. Federal taxation.
- 24-7-1313. Limitation on benefit enhancement — Acts 1997, No. 953.
- 24-7-1314. [Repealed.]

**Effective Dates.** Acts 2015, No. 301, § 11: Mar. 4, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex and the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of clarification to operate the system efficiently and effectively; that such clarification is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be-

come effective on: (1) The date of approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 243, § 5: Feb. 21, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great

importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 293, § 9: Feb. 28, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 750, § 3: Mar. 30, 2017. Emergency clause provided: "It is found and determined by the General Assembly

of the State of Arkansas that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 1049, § 3: Apr. 6, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of the Arkansas Teacher Retirement System are complex; that the system must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the system and to other citizens of the State of Arkansas; that the system needs to have the ability to make immediate changes to maintain and improve its actuarial status; and that this act is immediately necessary in order to maintain an orderly management of benefits for the members of the system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health,



and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 296, § 3: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions within this act to begin on the first day of the fiscal year to provide proper administration of the procedures referenced in this act; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2019, No. 427, § 23: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retire-

ment laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions of this act to begin on the first day of the fiscal year and to provide for the proper administration of the Arkansas Teacher Retirement System; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 279, § 38: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

**24-7-1306. Amount of deposits.**

(a) Teacher Deferred Retirement Option Plan deposits shall be a percentage of the plan benefit.

(b) If a plan participant has at least thirty (30) years of credited service in the Arkansas Teacher Retirement System, including combined service with a reciprocal system, a plan deposit shall be calculated beginning with the participant's plan benefit and then reduced by one percent (1%) for each year of credited service, including fractions of a year.

(c)(1) If a plan participant has at least twenty-eight (28) years of credited service but fewer than thirty (30) years of credited service in the Arkansas Teacher Retirement System, including combined service with a reciprocal system, the Board of Trustees of the Arkansas Teacher Retirement System may authorize early participation in the plan.

(2) The plan deposit of the early participant shall be calculated beginning with the plan benefit of the early participant, then initially reduced by one percent (1%) for each year of credited service, including fractions of a year, and then may be further reduced by at least an additional five-tenths of one percent (0.5%) but no more than one percent (1%) of the initially reduced plan deposit for each month of credited service under thirty (30) years.

(d) The Board of Trustees of the Arkansas Teacher Retirement System is authorized to make further adjustments to the plan by board resolution to make it cost-neutral to the Arkansas Teacher Retirement System.

**History.** Acts 1995, No. 1096, § 1; 1997, No. 953, § 1; 2001, No. 461, § 5; 2003, No. 991, § 1; 2005, No. 188, § 1; 2007, No. 298, § 3; 2011, No. 162, § 2; 2013, No. 605, § 1; 2019, No. 296, § 1.

**Amendments.** The 2019 amendment rewrote the section.

**24-7-1307. Account — Credit.**

(a) The member's Teacher Deferred Retirement Option Plan account shall be the account in which shall be accumulated the:

- (1) Plan deposits made on behalf of the member; and
- (2) Plan interest.

(b) At the end of each fiscal year, the Board of Trustees of the Arkansas Teacher Retirement System shall credit each plan participant's plan account with plan interest on the mean balance in the account for the fiscal year.

(c)(1) The board shall determine the plan interest rate to members' plan accounts based on:

- (A) A fixed interest rate that is adopted by board resolution by the end of the first quarter of the fiscal year in which the interest rate shall apply and that applies to subsequent fiscal years unless modified by the board; or



(B) A variable interest rate formula that is based on investment returns and other factors adopted by board resolution by the end of the first quarter of the fiscal year in which the interest rate shall apply and that applies to subsequent fiscal years unless modified by the board.

(2) In addition to the applicable interest rate for the fiscal year, the board may adopt by board resolution a Teacher Deferred Retirement Option Plan participation incentive rate during a fiscal year if investment returns justify an incentive rate for the fiscal year.

(d) If a participant continues covered employment after completing ten (10) consecutive years in the plan, the participant's plan account shall be credited on June 30 of each year or through the date of retirement, whichever occurs first, with ten (10) year plus plan interest as set by the board.

(e) For the purposes of this section, the ten (10) year plus plan interest rate shall be the rate determined to be appropriate by the board and adopted by board resolution by the end of the first quarter of the fiscal year in which the interest rate shall apply and that applies to subsequent fiscal years unless modified by the board.

**History.** Acts 1995, No. 1096, § 1; 2005, No. 188, § 2; 2011, No. 45, § 20; 2017, No. 1049, §§ 1, 2; 2019, No. 427, § 20; 2021, No. 279, §§ 32, 33.

**Amendments.** The 2017 amendment rewrote (c); and substituted "to be appropriate by the board and adopted by board resolution prior to the beginning of the fiscal year in which the interest rate shall apply" for "by the board as appropriate" in (e).

The 2019 amendment inserted "or through the date of retirement, whichever occurs first" in (d).

The 2021 amendment, in (c)(1)(A), (c)(1)(B), and (e), substituted "by the end of the first quarter" for "prior to the beginning"; in (c)(1)(A), substituted "that" for "which" and inserted "in which the interest rate shall apply"; deleted (c)(1)(B)(ii) and redesignated (c)(1)(B)(i) as (c)(1)(B); added "in which the interest rate shall apply and that applies to subsequent fiscal years unless modified by the board" in (c)(1)(B); and added "and that applies to subsequent fiscal years unless modified by the board" in (e).

## **24-7-1308. Termination of participation in Teacher Deferred Retirement Option Plan — Distribution options.**

(a)(1) The member's participation in the Teacher Deferred Retirement Option Plan shall cease when the member files an application for voluntary retirement with the Arkansas Teacher Retirement System under § 24-7-701 and is granted a monthly retirement benefit by the system.

(2) The system shall cancel a plan participant's retirement benefits, and the plan participant forfeits any retirement benefits, including plan account benefits, if the participant:

(A) Fails to meet the termination of employment requirement of § 24-7-701; and

(B) Has not reached normal retirement age.

(3) A plan participant becomes eligible again for retirement benefits, including plan account benefits, when the termination requirements are met.

(b)(1) When the member's participation in the plan ceases, the member may elect to:

(A) Receive the balance in the plan account as a lump sum;

(B) Annuitize the plan account as a monthly benefit paid under the annuity option selected by the member; or

(C) Receive a part of the balance in the plan account as a lump sum and annuitize the remaining balance.

(2) The Board of Trustees of the Arkansas Teacher Retirement System shall:

(A) Determine factors to be used for the conversion of plan balances to monthly amounts;

(B) Set requirements for the member's election under this subsection; and

(C) Modify the options under subdivision (b)(1) of this section by rule as necessary.

(c) When the member's participation in the plan ceases, the board shall cause the member's plan benefit to be paid directly to the member in the form of regular monthly amounts in the same amount and manner as would have been the case if the member had retired on the plan date and had made the same election under § 24-7-706 that was made on or before the plan date.

(d)(1) A member who fails to meet the termination requirements and receives retirement benefits shall repay any benefits received before becoming eligible again for voluntary retirement.

(2) If the member becomes eligible to receive the plan account distribution before the system collects it back from the member, the system may charge interest on the distribution for the time the member was ineligible to receive the distribution.

(e) The system may offset, adjust, or otherwise collect any benefits overpaid to a member under this subchapter.

**History.** Acts 1995, No. 1096, § 1; 2007, No. 298, § 4; 2009, No. 470, § 1; 2011, No. 162, § 3; 2021, No. 279, § 34. **Amendments.** The 2021 amendment deleted (b)(2) and redesignated former (b)(3) as (b)(2).

## **24-7-1310. Death of participant.**

(a) In the event that a Teacher Deferred Retirement Option Plan participant dies, the benefits payable from the plan shall be determined according to § 24-7-710 and the rules and resolutions of the Arkansas Teacher Retirement System.

(b)(1) However, the plan participant's eligible surviving spouse may choose to receive the plan benefit in a lump sum without affecting the payment of a monthly retirement benefit from the Arkansas Teacher Retirement System.



(2)(A) Subdivision (b)(1) of this section shall not apply if the member has directed one (1) or more residual beneficiaries under § 24-7-710.

(B) If a member has directed one (1) or more residual beneficiaries, the residual beneficiary shall receive the residual benefits payable, and the spousal benefit shall not be paid.

(c) The Teacher Deferred Retirement Option Plan participant's residue as used in § 24-7-701 et seq. that, except for the provisions of this subsection, would have been paid under § 24-7-709 shall be calculated as the greater of the following:

(1) The accumulated contributions and regular interest credited to the retirement reserve account as of the member's retirement effective date reduced by the total amount of regular annuities paid, further reduced by amounts received from the Teacher Deferred Retirement Option Plan account in the form of lump-sum or annuity payments; or

(2) The Teacher Deferred Retirement Option Plan account as of the member's retirement effective date reduced by amounts received from the Teacher Deferred Retirement Option Plan account in the form of lump-sum or annuity payments.

**History.** Acts 1995, No. 1096, § 1; 1997, No. 118, § 3; 2005, No. 188, § 3; 2007, No. 298, § 5; 2017, No. 243, § 4; 2017, No. 293, § 8; 2021, No. 279, § 35.

**A.C.R.C. Notes.** "Residue" is defined in § 24-7-709(a)(1)(B).

**Amendments.** The 2017 amendment by No. 243 redesignated (b) as (b)(1); in (b)(1), inserted "eligible" and substituted

"payment of a monthly retirement benefit" for "monthly retirement benefit payable"; and added (b)(2).

The 2017 amendment by No. 293 added "and the rules and resolutions of the Arkansas Teacher Retirement System" at the end of (a).

The 2021 amendment rewrote (c).

## 24-7-1312. Federal taxation.

(a) The Teacher Deferred Retirement Option Plan is intended to operate in accordance with 26 U.S.C. § 415 and other applicable sections of the Internal Revenue Code in a manner that protects the tax-qualified status of the system.

(b) Any provision of the plan that is found to be in conflict with an applicable provision of the Internal Revenue Code is hereby declared null and void.

**History.** Acts 1995, No. 1096, § 2; 2015, No. 301, § 10.

## 24-7-1313. Limitation on benefit enhancement — Acts 1997, No. 953.

(a) A benefit enhancement provided for by § 24-7-1306 shall not be implemented if it would cause the Arkansas Teacher Retirement System's unfunded actuarial accrued liabilities to exceed an eighteen-year amortization.

(b) A benefit enhancement provided for by § 24-7-1306 shall not be implemented by the system until the unfunded actuarial accrued liability is reduced to a level less than an eighteen-year amortization.

**History.** Acts 1997, No. 953, § 2; 2019, No. 427, § 21.

**Amendments.** The 2019 amendment rewrote the section.

## 24-7-1314. [Repealed.]

**A.C.R.C. Notes.** The repeal of this section by Acts 2019, No. 296, § 2 superseded the amendment of this section by Acts 2019, No. 315, § 2892. The amendment by Acts 2019, No. 315 deleted “and regulations” following “rules” in subsection (a).

**Publisher’s Notes.** This section, con-

cerning early participation, was repealed by Acts 2019, No. 296, § 2, effective July 1, 2019. The section was derived from Acts 1999, No. 1590, § 1; 2005, No. 188, § 4; 2017, No. 750, § 2; 2019, No. 315, § 2892. For current law, see § 24-7-1306.

## SUBCHAPTER 15 — RETIRANTS’ AD HOC INCREASE ACT

### SECTION.

24-7-1504. Promulgation of rules — Duty of board.

**Effective Dates.** Acts 2019, No. 427, § 23: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the Arkansas Teacher Retirement System Act, an act that created a state agency for the purpose of providing retirement benefits to school employees of the state, are in need of revision and updating to maintain the teacher retirement laws in conformance with sound public pension policy; that the Arkansas Teacher Retirement System operates on a fiscal year of July 1 to June 30; that a July 1, 2019 effective date is necessary to allow the provisions of this act to begin on the first day of the

fiscal year and to provide for the proper administration of the Arkansas Teacher Retirement System; that the updates and revisions to the Arkansas Teacher Retirement System Act are of great importance for actuarial purposes and the protection of member benefits under the Arkansas Teacher Retirement System; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

## 24-7-1504. Promulgation of rules — Duty of board.

(a) The Board of Trustees of the Arkansas Teacher Retirement System shall promulgate rules for the ad hoc benefit under this subchapter.

(b) An ad hoc benefit under this subchapter shall not be implemented if the ad hoc benefit would cause the Arkansas Teacher Retirement System’s unfunded actuarial accrued liabilities to exceed an eighteen-year amortization.



- (c) The board shall only authorize an ad hoc benefit that is actuarially appropriate for the system.
- (d) Before an increase of retirement benefit through an ad hoc benefit is authorized, the board shall file relevant information with the Joint Interim Committee on Public Retirement and Social Security Programs regarding the actuarial appropriateness of the increase.
- (e) The board may reduce the decade increase formula under § 24-7-1503 proportionately on a one-to-one formula basis for each decade when the reduction is actuarially feasible to implement.
- (f) The ad hoc benefit increase is a one-time adjustment and shall also be used to increase the base amount of a retiree's benefits when calculating any future additional benefit increases.

**History.** Acts 2009, No. 1315, § 1; substituted "an eighteen-year amortization" for "a thirty-year amortization" in 2019, No. 427, § 22.

**Amendments.** The 2019 amendment (b).

SUBCHAPTER 16 — ARKANSAS TEACHER RETIREMENT SYSTEM — OPTIONAL PARTICIPATION BY EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION

SECTION.	SECTION.
24-7-1601. Legislative history — Findings — Intent.	Retirement System before July 1, 2011.
24-7-1602. Definitions.	24-7-1605. Optional participation by institution of higher education employers on or after July 1, 2011.
24-7-1603. Provisions of subchapter controlling.	
24-7-1604. Coverage for employees enrolled in Arkansas Teacher	

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 279, § 38: July 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of the Arkansas Teacher Retirement System Act, § 24-7-201 et seq., are imminently in need of revision and updating to bring them into conformance with sound public pension policy and actuarial requirements; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of the State of Arkansas; that the Arkansas Teacher Retirement System needs to have the ability to make changes to maintain and improve its actuarial status; and that this act is necessary in order to maintain an orderly

system of benefits for the members of the Arkansas Teacher Retirement System. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2021."

Acts 2021, No. 427, § 7: Mar. 23, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the operations of a state public retirement system are complex; that the Arkansas Teacher Retirement System must be able to meet the needs of its members as anticipated by the General Assembly; that certain provisions of § 24-7-201 et seq. are in need of immediate revision and updating to conform with sound public pension policy and actuarial requirements; that there are conflicts in the law applicable to the Arkansas Teacher Retirement System concerning reciprocal service in alternate retirement plans; that member benefits will be at risk if the conflicts in the law con-

cerning reciprocal service in alternate retirement plans remain unresolved; that this act resolves the conflicts in the law concerning reciprocal service in alternate retirement plans; that such revision and updating is of great importance to members of the Arkansas Teacher Retirement System and to other citizens of this state; and that this act is necessary in order to maintain an orderly system of benefits for the members of the Arkansas Teacher Retirement System and reciprocal systems. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## 24-7-1601. Legislative history — Findings — Intent.

(a) It is found and determined by the General Assembly that:

(1) The establishment of the Post-Secondary Education Plan is a historical component of retirement legislation that seeks to develop a more equitable retirement system for members of the Arkansas Teacher Retirement System; and

(2) Confusion about the intent of the General Assembly concerning the coverage of employees of state-supported universities, colleges, junior colleges, and vocational-technical schools, the Arkansas Higher Education Coordinating Board, the Division of Career and Technical Education, the Adult Education Section, the Office of Skills Development, and Arkansas Rehabilitation Services, and any other entity offering both the Arkansas Teacher Retirement System retirement plan and an alternate retirement plan create uncertainty in the administration of law, and legislative clarification of the law is needed.

(b)(1) Historically, the Arkansas Teacher Retirement System has been mandated by the General Assembly to provide retirement benefits for an employee of a public school, public educational agency, or any other eligible employer included for coverage in the Arkansas Teacher Retirement System.

(2) Originally, the Arkansas Teacher Retirement System was designed to provide retirement benefits to certified teachers and administrators in the public schools. However, the coverage has gradually been extended to all employees of the public schools and to other public entities that support educational activities in Arkansas.



(3) Beginning with legislation in 1967 and continuing through the early 1980s, the General Assembly created a right for certain colleges, vocational-technical schools, and the Arkansas Higher Education Coordinating Board to establish and maintain an alternate retirement plan for its employees and perform all the functions reasonably appropriate in the retirement plan's administration.

(4) The general intent of the early legislation was to allow those institutions of higher education employers to offer their employees the option to participate in an alternate retirement plan, the Arkansas Teacher Retirement System retirement plan, or the Arkansas Public Employees' Retirement System retirement plan.

(5) The law was designed to encourage recruitment of public school teachers and administrators into postsecondary positions by allowing them to continue in the Arkansas Teacher Retirement System and to encourage recruitment of private and out-of-state educators by the use of the alternate retirement plan that is offered nationwide.

(c)(1) The Arkansas Teacher Retirement System requested an Attorney General's opinion for legal clarification, as the laws have been amended over time making the wording difficult to interpret.

(2) All public school employees are mandatory members of the Arkansas Teacher Retirement System as a condition of employment. The uncertainty is with employees of institutions of higher education employers, specifically:

(A) Whether an institution of higher education employer can exclude a part-time employee from participation in the Arkansas Teacher Retirement System and thereby be exempt from reporting salary and remitting member or employer contributions for its part-time employees; and

(B) Whether a retired Arkansas Teacher Retirement System member can be enrolled in the institution of higher education employer's alternate retirement plan with or without separation while simultaneously drawing retirement benefits from the Arkansas Teacher Retirement System.

(3) The Attorney General's Opinion No. 2009-164, dated March 16, 2010, concludes that the current laws related to the Arkansas Teacher Retirement System are difficult to understand, as the intent of the General Assembly is not clear, and legislative clarification is required.

(d) Therefore, the General Assembly finds that this subchapter is necessary to:

(1) Protect the retirement benefits for employees of the public school system;

(2) Provide fair treatment and clear intent with respect to part-time employees and full-time employees of institutions of higher education employers;

(3) Clarify the obligations of the Arkansas Teacher Retirement System with respect to its members who become employed by an institution of higher education employer; and

(4) Set forth requirements that supersede any prior legislation relating to employees of institutions of higher education.

**History.** Acts 2011, No. 513, § 1; 2019, No. 910, § 2379; 2021, No. 427, § 4.

**Amendments.** The 2019 amendment substituted “Division of Career and Technical Education, Adult Education Section, Office of Skills Development, and Arkan-

sas Rehabilitation Services” for “Arkansas Department of Career Education” in (a)(2).

The 2021 amendment substituted “alternate” for “alternative” in (b)(4).

## 24-7-1602. Definitions.

As used in this subchapter:

(1) “Benefits-eligible” means a class of employees, determined at the discretion of a post-secondary or higher education employer, eligible to participate in the Arkansas Teacher Retirement System, an alternate retirement plan, or the Arkansas Public Employees’ Retirement System;

(2) “Nonmandatory employer” means any public employer that was authorized to enroll new employees into the Arkansas Teacher Retirement System or alternate retirement plan before July 1, 2011;

(3) “PSHE employer” means a post-secondary or higher education employer:

(A) With employees that may be hired without becoming mandatory members of the Arkansas Teacher Retirement System; and

(B) That offers the Arkansas Teacher Retirement System as a retirement plan on or after July 1, 2011; and

(4) “PSHE plan” means the plan establishing the right of a new employee of a PSHE employer to participate in the Arkansas Teacher Retirement System on or after July 1, 2011.

**History.** Acts 2011, No. 513, § 1; 2021, No. 427, § 5.

**Amendments.** The 2021 amendment

deleted former (1) and redesignated former (2) as (1); and inserted “retirement” in (1).

## 24-7-1603. Provisions of subchapter controlling.

(a)(1) This subchapter controls any inconsistent provision of any other law regarding the enrollment and coverage of an employee of a PSHE employer in either the Arkansas Teacher Retirement System retirement plan or an alternate retirement plan that is offered by a PSHE employer.

(2) This subchapter is enacted to supersede and specifically control any inconsistent provisions under § 24-7-801 et seq., § 24-7-901 et seq., and § 24-7-1001 et seq.

(b) The Arkansas Teacher Retirement System retirement plan is administered under the provisions of the Arkansas Teacher Retirement System Act.

**History.** Acts 2011, No. 513, § 1; 2021, No. 427, § 6.

**Amendments.** The 2021 amendment

substituted “alternate” for “alternative” in (a)(1).



**24-7-1604. Coverage for employees enrolled in Arkansas Teacher Retirement System before July 1, 2011.**

(a) Beginning July 1, 2011, all current employees of a nonmandatory employer that are current members of the Arkansas Teacher Retirement System may continue membership and continue to accrue service credit in the system without any change in participation in the system if:

(1) The employee is:

(A) Part-time and the employee continues to provide services in each fiscal year at approximately the same level of service; or

(B) Full-time and the employee continues to provide services in each fiscal year;

(2) The nonmandatory employer chooses to continue reporting service to the system for the employee;

(3) The nonmandatory employer determines that the employee will contribute at least part-time services in subsequent months of the fiscal year if services are not rendered throughout the fiscal year;

(4) The nonmandatory employer remits contributions to the system on behalf of the employee during the fiscal year beginning July 1, 2011, and each fiscal year thereafter; and

(5) The employee's service with the nonmandatory employer is not terminated.

(b) The nonmandatory employer shall remit employer contributions under § 24-7-401 et seq. for an employee under this section and shall be subject to the rights and obligations of an employer under the Arkansas Teacher Retirement System Act for the employees of the nonmandatory employer participating in the system.

(c) The employee under this section shall remit employee contributions under § 24-7-406 et seq. and shall be subject to the rights and obligations of an employee under the Arkansas Teacher Retirement System Act.

(d) The nonmandatory employer shall provide information in a format requested by the system to allow the system to monitor and track all employees who participate in the system.

**History.** Acts 2011, No. 513, § 1; 2021, No. 279, § 36. added "for the employees of the nonmandatory employer participating in the system" in (b).

**Amendments.** The 2021 amendment

**24-7-1605. Optional participation by institution of higher education employers on or after July 1, 2011.**

(a)(1) A PSHE employer shall adopt and record a policy or designation that identifies which positions at the PSHE employer's institution of higher education are benefits-eligible for retirement benefits.

(2) A new employee of a PSHE employer may participate in the PSHE plan if the employee:

(A) Is benefits-eligible as determined by the PSHE employer;

(B) Is a vested member of the Arkansas Teacher Retirement System at the time of initial employment;

(C) Is not a vested member of the system but meets the requirements of a less restrictive PSHE plan adopted by the specific PSHE employer; and

(D) Signs an irrevocable PSHE plan participation form provided by the system.

(b)(1) A nonmandatory employer becomes a PSHE employer upon enrolling a new eligible member with the system on or after July 1, 2011.

(2) A PSHE plan employee shall continue as a member in the system retirement plan so long as the member is employed by a PSHE employer.

(3) An election to participate in the retirement system plan under this subsection is irrevocable so long as the employee does not obtain a termination refund from the system after the election.

(c)(1)(A) A PSHE employer may adopt a resolution that allows a new employee to participate as a PSHE plan employee without being vested in the system.

(B)(i) A less restrictive plan is effective when the resolution adopted by a PSHE employer is presented to the system.

(ii) A PSHE employer may modify a less restrictive PSHE plan at any time.

(iii) A less restrictive plan adopted by a PSHE employer before July 1, 2013, may provide that a new employee hired between July 1, 2011, and June 30, 2013, who was prohibited from participating as a PSHE employee in the system and who would have been eligible under the less restrictive plan adopted by the PSHE plan employer may have an opt-in opportunity to participate in the system.

(2)(A) A PSHE employer may adopt an opt-in opportunity as provided under subdivision (c)(1)(B)(iii) of this section by resolution adopted by the governing body of the PSHE employer that allows a benefits-eligible employee who was prohibited from becoming a member of the system from July 1, 2011, to June 30, 2013, because the benefits-eligible employee was not a vested member of the system at the time of initial employment.

(B) To participate in the opt-in opportunity provided by a PSHE employer, an employee shall:

(i) Have been continuously employed by the PSHE employer once hired after July 1, 2011;

(ii) Meet the PSHE employer's less restrictive PSHE plan; and

(iii) Elect to become a member of the system between July 1, 2013, and June 30, 2014.

(3)(A) A benefits-eligible employee who elects to become a member of the system as provided under subdivision (c)(2) of this section may purchase service credit based on the applicable member employee and employer contribution rates on annual salary plus eight percent (8%) annual interest if the election is made between July 1, 2013, and June 30, 2014.



(B) A purchase of service credit under subdivision (c)(3)(A) of this section shall be paid in full within one (1) year of the date that the benefits-eligible member elects to become a member of the system.

(4) If a PSHE employer does not adopt a less restrictive plan, the PSHE plan shall remain in effect as provided under subsection (a) of this section.

(d)(1) If a benefits-eligible employee at a PSHE employer was prohibited from becoming a member of the system from July 1, 2011, to June 30, 2013, because the benefits-eligible employee was not a vested member of the system at the time of employment, and the benefits-eligible employee has been continuously employed by the PSHE employer, then the benefits-eligible employee may elect to become a member of the system between July 1, 2013, to June 30, 2014.

(2) A benefits-eligible employee who elects to become a member of the system under subdivision (c)(1) of this section may purchase service credit based on the applicable member and employer contributions rates on annual salary plus eight percent (8%) annual interest using a special formula if the election is made between July 1, 2013, and June 30, 2014, and is paid in full within one (1) year of the date the benefits-eligible member elects to become a member of the system.

(e)(1) The PSHE employer shall remit employer contributions under § 24-7-401 et seq. and be subject to the rights and obligations of an employer under the Arkansas Teacher Retirement System Act once a benefits-eligible employee elects to participate in the system for the employees of the PSHE employer participating in the system.

(2) The benefits-eligible employee who elects to participate in the system retirement plan shall remit employee contributions under § 24-7-406 and be subject to the rights and obligations of an employee under the Arkansas Teacher Retirement System Act.

(f) The PSHE employer shall comply with the system's verification and reporting requirements that are implemented by the system.

(g) A member shall not purchase prior unreported service except as provided under subdivision (c)(2) of this section on or after July 1, 2011, regardless of when service was provided to a nonmandatory employer.

**History.** Acts 2011, No. 513, § 1; 2013, No. 607, § 1; 2021, No. 279, § 37. added "for the employees of the PSHE employer participating in the system" in

**Amendments.** The 2021 amendment (e)(1).

## CHAPTER 8

### RETIREMENT OF JUDGES AND COURT EMPLOYEES

#### SUBCHAPTER.

#### 2. ARKANSAS JUDICIAL RETIREMENT SYSTEM.

#### 4. MUNICIPAL JUDGES AND CLERKS — COUNTIES WITH POPULATION OF 150,000.

**A.C.R.C. Notes.** Acts 2019, No. 910, § 6341, provided: "Effect of transfer on retirement system membership and health insurance plan participation."

"(a) As used in this section, 'retirement system' means:

"(1) The Arkansas Teacher Retirement System, established by the Arkansas Teacher Retirement System Act, § 24-7-201 et seq.;

"(2) The Arkansas State Highway Employees' Retirement System, established by § 24-5-103;

"(3) The Arkansas Public Employees' Retirement System, established by § 24-4-103;

"(4) The State Police Retirement System, established by § 24-6-203;

"(5) The Arkansas Judicial Retirement System, established by § 24-8-201 et seq.;

"(6) An alternate retirement plan for:

"(A) A college, university, or the Department of Higher Education provided for under § 24-7-801 et seq.; and

"(B) A vocational-technical school or the Department of Career Education provided for under § 24-7-901 et seq.;

"(7) The Arkansas Local Police and Fire Retirement System provided for under § 24-10-101 et seq.; and

"(8) A firemen's relief and pension fund or a policemen's pension and relief fund provided for under § 24-11-101 et seq.

"(b) If this act results in an employee who is a current member of a retirement system prior to the effective date of this act being transferred to or affiliated with a cabinet-level department that is covered by a different retirement system than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act by written election and notice to the new employer and affected retirement system, make a one-time choice to:

"(1) Remain in his or her same retirement system prior to the effective date of

this act, under the same conditions then provided by law or as may later be provided by law; or

"(2) Become a member of the retirement system of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions for a reciprocal member to be transferred as an active member to a reciprocal system as currently provided by law under the system to which the reciprocal member is transferred.

"(c) If this act results in an employee being transferred to or affiliated with a cabinet-level department that is covered by a different health insurance plan than his or her previous state entity, the employee may, within one hundred eighty (180) days of the effective date of this act, make a one-time choice between:

"(1) Continuing to participate in his or her health insurance plan prior to the effective date of this act, under the same conditions then provided by law or as may later be provided by law; or

"(2) Participating in the health insurance plan of the cabinet-level department to which the employee is transferred to or affiliated with under this act, under the same conditions then provided by law or as may later be provided by law.

"(d)(1)(A) A retirement system may issue policies establishing the procedure for an employee to exercise benefit options under subsection (b) of this section.

"(B) The State and Public School Life and Health Insurance Board may issue policies establishing the procedure for an employee to exercise benefit options under subsection (c) of this section.

"(2) A policy under subdivision (d)(1) of this section is not a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

## SUBCHAPTER 2 — ARKANSAS JUDICIAL RETIREMENT SYSTEM

### SECTION.

24-8-203. Board of trustees.

24-8-205. Trust fund.

24-8-215. Eligibility for benefits — Retirement generally.

### SECTION.

24-8-219. Rights of surviving unremarried spouses of certain judges.



**24-8-203. Board of trustees.**

(a) The administration and control of the Arkansas Judicial Retirement System shall be vested in a board known as the "Board of Trustees of the Arkansas Judicial Retirement System".

(b)(1) The members of the board shall consist of five (5) persons appointed by the Arkansas Judicial Council.

(2) The members shall serve at the pleasure of the council.

(3) One (1) of the members shall be elected by the board to serve as chair.

(c) The duties of the board shall be:

(1) To make all rules necessary and proper for carrying out the provisions of this section;

(2) To provide administrative direction and control of the executive director and staff as may from time to time be required;

(3) To appoint an actuary, or firm of actuaries, to be a technical advisor to the board on matters regarding the operation of the system on an actuarial basis. The actuary shall perform such duties as are required by him or her under this subdivision (c)(3) and as are from time to time required by the board;

(4) To appoint professional investment counsel to be the board's investment advisor or money manager;

(5) To serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.; and

(6) To do any and all things necessary for the proper execution of this section.

(d) The board shall meet at least quarterly and at other times as necessary at the call of the chair.

**History.** Acts 1953, No. 365, § 3; 1981, No. 604, § 1; 1985, No. 235, § 1; A.S.A. 1947, § 22-903; Acts 1995, No. 1282, § 1; 1997, No. 240, § 1; 1997, No. 250, § 232; 2019, No. 315, § 2893.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (c)(1).

**24-8-205. Trust fund.**

(a) In addition to the Judges Retirement Fund in the State Treasury, a bank trust fund or funds may be established and maintained in a federally insured depository institution designated by the Board of Trustees of the Arkansas Judicial Retirement System.

(b) The board shall be the trustees of the funds, subject to the other provisions of this section, and may employ professional investment counsel in either an advisory capacity only or as a money manager with authority to execute transactions.

(c) The funds of the system shall be invested and reinvested in accordance with the following procedure:

(1) From time to time, the board shall formulate the policy to be followed in future investment activity;

(2) If the board employs investment counsel with authority to execute transactions, the counsel or money manager shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the moneys or investments of the system pursuant to the provisions of this section and in accordance with the current investment policy filed with the board;

(3) At least semiannually, the investment counsel shall file with the board a written report setting forth, for the period since its last report, all investments purchased and sold, all receipts and disbursements, and any other transactions concerning system moneys;

(4) At each regular meeting, the board shall examine each written report received from the investment counsel since the last regular meeting;

(5) Anything in this section to the contrary notwithstanding, from time to time the board may direct a specific investment activity and shall be fully responsible for the direction; and

(6) Anything in this section to the contrary notwithstanding, investment activity shall be subject to the terms, conditions, limitations, and restrictions imposed by law upon state public employee retirement plans in the making and disposing of their investments.

(d) A decision on whether to invest, not invest, or withdraw from investment the funds of the system shall not be based on a consideration that the location of the investment, fund, company, or any other type of investment vehicle is in the State of Israel.

**History.** Acts 1983, No. 922, § 7; 1985, No. 1008, § 1; A.S.A. 1947, § 22-960; Acts 2017, No. 769, § 1. **Amendments.** The 2017 amendment added (d).

## **24-8-215. Eligibility for benefits — Retirement generally.**

(a) Any active member with a minimum of ten (10) years of credited service may voluntarily retire upon reaching sixty-five (65) years of age or thereafter upon filing a written application with the Board of Trustees of the Arkansas Judicial Retirement System.

(b) Any other member who has a minimum of twenty (20) years of credited service may retire regardless of age, and any judge or justice who has served at least fourteen (14) years shall be eligible for benefits upon reaching age sixty-five (65).

(c)(1) A judge or justice who is not seventy (70) years of age on the date on which he or she is elected to a term of office may complete the term without forfeiting his or her rights to retirement benefits under this section.

(2)(A) Any judge or justice who is not eligible to retire at age seventy (70) may continue to serve as judge until the completion of the term of office in which he or she receives sufficient credited service to retire without losing his or her retirement benefits.



(B) The judge or justice shall lose all retirement benefits if he or she serves beyond the end of the term needed to get sufficient credited service to retire.

(3)(A) Otherwise, judges or justices must retire by their seventieth birthday or lose their retirement benefits.

(B) However, any active judge or justice who was serving prior to July 1, 1965, may continue to serve until any age and shall, upon retirement, be eligible to receive retirement benefits.

(d) In all cases of age and service retirement for judges or justices elected after July 1, 1983, the member must have a minimum of eight (8) years of actual service as a justice of the Supreme Court or a judge of the circuit or chancery courts or of the Court of Appeals.

(e) The provisions of this section shall be accumulative to all present laws pertaining to the retirement of judges of the circuit and chancery courts and of justices of the Supreme Court and shall in no way repeal, amend, or modify such laws except as otherwise specifically provided in this section.

**History.** Acts 1953, No. 365, § 2; 1963, No. 223, § 1; 1965, No. 139, § 2; 1967, No. 249, § 1; 1969, No. 370, §§ 1, 2; 1973, No. 407, § 1; 1983, No. 231, § 1; 1985, No. 289, § 1; A.S.A. 1947, §§ 22-902, 22-902n; Acts 1987, No. 256, § 1; 1991, No. 792, § 1; 2019, No. 753, § 1.

**Amendments.** The 2019 amendment

substituted "A judge or justice who is not seventy (70) years of age on the date on which he or she is elected to a term of office" for "Any judge or justice who becomes seventy (70) years of age during a term of office to which he or she has been elected" in (c)(1).

## CASE NOTES

### Constitutionality.

This section and § 24-8-710 impose neither a direct nor an indirect qualification for holding judicial office and do not prohibit any judge from holding office past age 70; if elected past age 70, no judge is subject to being ousted from his or her position as a result of the statutes, but instead, the laws pertain only to a judge's eligibility to receive retirement benefits, which are, after all, a matter of grace bestowed by the General Assembly. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

Eligibility for benefits demonstrably is not the equivalent of a qualification for holding judicial office, and this section and § 24-8-710 do not constitute an additional qualification in contravention of the constitution; accordingly, the statutes do not violate Ark. Const. amend. 80, § 16. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

This section and § 24-8-710 are rationally related to the achievement of legiti-

mate state objectives, and that the laws are under-inclusive by allowing a few to briefly evade their strictures provides no reason to hold them unconstitutional; the General Assembly could conclude, without being arbitrary, that allowing some to serve a short time to achieve eligibility for retirement is to place repose and confidence in the voters to not elect as a first-time judge one who is past the prime of his or her abilities. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

This section and § 24-8-710 bear a rational relationship to legitimate legislative purposes and advance the State's interest in protecting and maintaining the integrity of the judiciary; thus, it is not irrational for the State to promote retirement at an advanced age in order to attain the highest possible standards for the judiciary, and encouraging voluntary retirement eliminates the unpleasantness of selectively removing aged and disabled judges through formal disciplinary pro-

ceedings. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

Promoting voluntary retirement advances the State's legitimate interest in maintaining high performance for the judiciary by providing greater opportunities for younger attorneys to take the bench; the retirement system also substantially increases judicial manpower by bringing in younger judges while retaining the part-time services of willing and able retired judges. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

This section and § 24-8-710 are not an unconstitutional taking without due process because judges provided no argument showing that the circuit court erred in denying their due-process claim by relying on the executive director's assurance that contributions would be refunded if a judge remained in office past age 70. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

### **24-8-219. Rights of surviving unremarried spouses of certain judges.**

(a) The surviving unremarried spouse, sixty-five (65) years of age or older, of any person who served as a justice of the Supreme Court, as a judge of the Court of Appeals, or as a judge of any circuit or chancery court of the State of Arkansas for a period of eight (8) years or longer, who is not now receiving, or entitled to receive, survivors' benefits under the Arkansas Judicial Retirement System shall be entitled to receive survivors' benefits under the system upon meeting the qualifications therefor and otherwise complying with the provisions of this section.

(b)(1) Any person desiring to apply for and draw benefits provided for in this section shall make application to the Auditor of State.

(2) The application shall be supported and accompanied by proof satisfactory to the Auditor of State that the applicant is an unmarried spouse, sixty-five (65) years of age or older, of a person who served either on the Supreme Court, as a judge of the Court of Appeals, or as a circuit or chancery judge for a period of eight (8) years or longer, and that the applicant was married to the deceased justice or judge for at least five (5) years, was married to him or her at the time of his or her death, and was living with him or her in marriage at the time of his or her death.

(c) Upon receipt of the application and proof, the Auditor of State shall determine the total amount of compensation received by the deceased judge subsequent to July 1, 1953, and shall compute four percent (4%) of that amount as the amount the applicant shall pay to the Auditor of State if the applicant desires to qualify for survivor benefits under the system as permitted in this section.

(d) The Auditor of State shall also determine the amount which would have been paid to the applicant had the deceased spouse been qualified under the system.

(e)(1) The Auditor of State shall credit the amount as determined in subsection (d) of this section against the amount which has been computed as the four-percent amount which the applicant is required to pay under subsection (c) of this section.



(2) The applicant shall be required to pay to the Auditor of State only the amount by which the four-percent figure exceeds the credit.

(3) This payment shall be deposited into the State Survivor's Account by the Auditor of State.

(f) Upon payment of the adjusted amount as required and prescribed in this section, if payment is due after application of credits, the applicant shall be entitled to draw survivors' benefits as prescribed in the system from the first day of the month following payment of the adjusted amount to the Auditor of State, or from the first day after the accounts are adjusted if no payment is due.

(g) Survivors' benefits provided for in this section shall be paid in the same manner as other survivors' benefits under the system are paid.

**History.** Acts 1975, No. 484, §§ 1-7; 1979, No. 636, §§ 1, 2; 1981, No. 909, §§ 1-3; A.S.A. 1947, §§ 22-949 — 22-955; Acts 2017, No. 265, § 3.

**Amendments.** The 2017 amendment inserted "as a judge of the Court of Appeals" in (a) and (b)(2).

#### **SUBCHAPTER 4 — MUNICIPAL JUDGES AND CLERKS — COUNTIES WITH POPULATION OF 150,000**

##### **SECTION.**

24-8-408. Eligibility for benefits —  
Clerks.

#### **24-8-408. Eligibility for benefits — Clerks.**

(a)(1) Any clerk of a municipal court to which this subchapter applies, appointed by the judge or judges of the court, shall be eligible to receive retirement benefits provided by this subchapter who:

(A) Attains age sixty (60) and has served in office as clerk for at least ten (10) years;

(B) Attains age sixty-five (65) and has served in office for at least eight (8) years; or

(C) Has served in office for at least twenty (20) years, irrespective of age.

(2) If the clerk resigns, retires from office, or is succeeded in office by another clerk, the clerk shall receive retirement pay for and during the remainder of the person's natural life in an amount equal to one-half (½) of the salary payable to the clerk at the time of resignation, retirement, or succession in office.

(3) The governing body of the municipality or the county may by ordinance provide that after the death of the clerk, the surviving spouse of a qualifying court clerk can continue to receive the retirement benefits under this subchapter until the surviving spouse dies or remarries.

(b)(1) Any clerk of a municipal court who is covered by the provisions of this subchapter and who has seven (7) or more years of service in any position in the office of the county sheriff shall be entitled to have the

service in the office of the county sheriff credited as municipal court clerk service.

(2) The service so converted shall be treated the same as if it were service as clerk of a municipal court in the county for purposes of determining eligibility for retirement under the provisions of this subchapter.

**History.** Acts 1965, No. 19, § 4; 1969, No. 102, § 3; 1975, No. 637, § 1; 1979, No. 155, § 1; 1979, No. 660, § 1; A.S.A. 1947, §§ 22-944, 22-948.1; Acts 2001, No. 1613, § 3; 2019, No. 84, § 7.

**Amendments.** The 2019 amendment repealed (a)(1)(D).

## SUBCHAPTER 7 — TIER TWO ACTUAL JUDICIAL SERVICE BENEFIT PLAN

### 24-8-710. Eligibility for benefits — Retirement generally.

#### CASE NOTES

##### **Constitutionality.**

Section 24-8-215 and this section impose neither a direct nor an indirect qualification for holding judicial office and do not prohibit any judge from holding office past age 70; if elected past age 70, no judge is subject to being ousted from his or her position as a result of the statutes, but instead, the laws pertain only to a judge's eligibility to receive retirement benefits, which are, after all, a matter of grace bestowed by the General Assembly. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

Eligibility for benefits demonstrably is not the equivalent of a qualification for holding judicial office, and § 24-8-215 and this section do not constitute an additional qualification in contravention of the constitution; accordingly, the statutes do not violate Ark. Const. amend. 80, § 16. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

This section and § 24-8-215 are rationally related to the achievement of legitimate state objectives, and that the laws are under-inclusive by allowing a few to briefly evade their strictures provides no reason to hold them unconstitutional; the General Assembly could conclude, without being arbitrary, that allowing some to serve a short time to achieve eligibility for retirement is to place repose and confidence in the voters to not elect as a first-time judge one who is past the prime of his or her abilities. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

This section and § 24-8-215 bear a rational relationship to legitimate legislative purposes and advance the State's interest in protecting and maintaining the integrity of the judiciary; thus, it is not irrational for the State to promote retirement at an advanced age in order to attain the highest possible standards for the judiciary, and encouraging voluntary retirement eliminates the unpleasantness of selectively removing aged and disabled judges through formal disciplinary proceedings. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

Promoting voluntary retirement advances the State's legitimate interest in maintaining high performance for the judiciary by providing greater opportunities for younger attorneys to take the bench; the retirement system also substantially increases judicial manpower by bringing in younger judges while retaining the part-time services of willing and able retired judges. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).

This section and § 24-8-215 are not an unconstitutional taking without due process because judges provided no argument showing that the circuit court erred in denying their due-process claim by relying on the executive director's assurance that contributions would be refunded if a judge remained in office past age 70. *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370 (2016).









































